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M. R. PALANDE

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INTRODUCTION TO THE INDIAN CONSTITUTION

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OXFORD UNIVERSITY PRESS

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By

M. R. PALANDE, M.A.

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1417

GEOFFREY CUMBERLEGE
OXFORD UNIVERSITY PRESS
1956

Oxford University Press, Amen House, London E.C.4
GLASGOW NEW YORK TORONTO MELBOURNE WELLINGTON
BOMBAY CALCUTTA MADRAS KARACHI CAPETOWN IBADAN
Geoffrey Cumberlege, Publisher to the University

First edition, 1937
Second edition, 1940
Third edition, 1944
Fourth edition, 1947
Fifth edition, 1951
Sixth edition, 1956

Printed in India by Wilfred Maciel at Western Printers and Publishers, 15 and 23 Hamam Street, Fort, Bombay 1, and published by Geoffrey Cumberlege, Oxford University Press, Oxford House, Apollo Bunder, Bombay 1

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PART I—HISTORICAL

A BRIEF SURVEY OF
BRITISH ADMINISTRATION IN INDIA
1774-1947

1

BRITISH ADMINISTRATION BEFORE 1935

INTRODUCTORY. India is an ancient country with a long and colourful history. Through a vast span of time many races and warriors have been attracted to its territory by the impulse of migration in search of new homes or by the lust of acquisition and conquest. Most of them are known to have settled down in the land and been completely assimilated with the indigenous population. The impact of these vicissitudes and of the continuous process of racial absorption which accompanied them on the social and political life of the country was remarkable. It was manifest in the gradual but almost uninterrupted evolution of an inclusive and composite culture which has a strong underlying bond of an inner organic unity, with a rich variety of customs, practices, beliefs and traditions.

Politically speaking, however, excepting to some extent for short spells of time during the reigns of Ashoka and Akbar, the country as a whole was never under the authority of one supreme ruler. It was divided into a large number of independent sovereign states, frequently rising and falling, and holding sway in different parts of the land. Almost all these states were essentially monarchical in character and their governments were dominated by the ruling kings who may have, at times, created councils of ministers and advisers but whose power was not subject to any constitutional restraints as understood in the modern sense. At best, they were benevolent autocrats, wise, popular and respected; at worst, they were

tyrants pure and simple, whose despotic policies and actions roused keen resentment and often led to successful risings and rebellions.

A study of the basic concepts of Hindu and Muslim polity in ancient and mediæval times and of the administrative structure that was more or less based on those concepts would be of great interest. Such a study, however, is beyond the scope of this work. We are concerned in these pages with a broad survey of the administrative system that was evolved in the country by British rulers and that was actually in operation before the achievement of Independence in August 1947. British administration in India began with the British conquest of India. Acquisition of territory naturally required, and was followed by, arrangements for its governance. An administrative system under British initiative and control thus developed in India during the days of British rule. The framers of the constitution of independent India thought it proper to draw freely upon the contents and principles of this system, and a brief acquaintance with the main landmarks in the growth of that system and of the principal features of its working would be both appropriate and instructive.

The British were almost the last of the foreigners to reach the shores of India. They came as commercial adventurers in the early days of the seventeenth century, and thanks to their energetic action and aggressive spirit as also to the dismal decadence and degeneration of Indian rulers, they were destined to become the masters of the country during the course of two hundred years. So swift a conquest by so few of many millions, from such a distance and at such small cost to the conqueror, has had few parallels. The phenomenon is as amazing and

tragic as it is full of significance to a student of social and political affairs.

THE EAST INDIA COMPANY. The Indian Empire was acquired for Britain by a body which was intended to be merely a commercial concern and which at its inception had no military ambitions or aptitude whatever. The East India Company was formed in 1600 and Queen Elizabeth, by a special charter, conferred upon this body the monopoly of trade in eastern waters. In the course of their trading voyages the Company's ships reached the shores of India which was then reputed for its great wealth and splendour. English merchants soon established business relations with the Indian commercial communities and set up a flourishing export and import trade with European countries. Their 'factories', that is business centres, came into existence in different parts of India. The Company was often able to secure valuable concessions and privileges from the Mogul Emperors. After the death of Aurangzeb in 1707, the Mogul empire fell into decay and the Company was involved in the vortex of Indian politics. It began to enlist armies, fight wars, and conquer territory. By 1858 the whole of India came into its possession.

PARLIAMENTARY ACTS: 1774-1858. However, the Company itself was not a sovereign body. Legally, the territory which it acquired was acquired for the British Government. The primary object of its creation was trade, but when it began to undertake the responsibilities of governance, Parliament thought it necessary to intervene. During the century of conquest it passed many Acts to prescribe and regulate the manner in which the conquered territory should be administered. The earliest of these measures was the famous Regulating Act which

was passed in 1774. It took the first steps in setting up a unified system of administration for the whole of India by appointing a Governor-General who was given power to superintend, direct and control the governments of all the provinces. An Executive Council was created to assist him. A Supreme Court of Judicature was also established at Calcutta. Pitt's India Act of 1784 established a Board of Control in England with full powers to supervise and control the Indian Government. It worked as a regular department of State, functioning from day to day, and its President enjoyed the status and responsibility of a Cabinet Minister. The Act of 1833 abolished the trading monopoly of the Company and completely stopped its commercial activities. This Act introduced a highly centralized system of administration and deprived the provinces of their law-making power. After the Company had begun to play the role of an empire-builder, many Englishmen felt that it was not really competent to fulfil the duties and obligations of an imperial authority. The Indian Revolt of 1857 precipitated the final crisis and the Company was dissolved by the Act of 1858. The Government of India was then directly taken over by the Crown and Parliament of Britain and a separate Secretary of State was created to look after Indian affairs.

After the failure of the Indian Revolt circumstances naturally changed. The Indian people began to be gradually reconciled to their position of subjection and dependence. The conquerors also desired to create an atmosphere of peace and confidence in the country. The impact of Western civilization on the Indian mind was producing a new self-consciousness and awakening among the educated classes, and a general intellectual unrest began to manifest itself in various ways. The formation

of the Indian National Congress in 1885 was an attempt to give an organized expression to this national renaissance and revival. Parliament thought it desirable to take cognizance of the fact that the Indian citizen was becoming politically alive and sought to bring him a little closer to the administrative machine.

POLICY OF ASSOCIATION: 1861-1919. This was called the policy of association. It had nothing to do with the introduction of responsible and democratic government but was only intended to establish some kind of contact between the rulers and their subjects. It was obviously necessary that even an irresponsible bureaucracy should have adequate means for ascertaining the trend of popular opinion. The public also required a channel for the lawful expression of discontent against the actions of Government. Both these objectives were achieved by the formation of Legislative Councils which contained a small number of non-official Indians, partly nominated and partly elected. Two Acts were passed by Parliament to effect this change, one in 1861 and the other in 1909.

The ventilation of grievances and of dissatisfaction with the existing order became more systematic and vigorous after the Congress began to hold its sessions regularly every year in different parts of India. When it was found that the redress of grievances which was eagerly sought for was not forthcoming, the consequent disappointment and sense of frustration increased the extent and intensity of political agitation. The partition of Bengal in 1905 further aggravated popular discontent. Indian leaders were convinced that the proper solution of all their difficulties lay in the achievement of Swaraj, that is self-government, a demand for which was put forward for the first time by Dadabhai Naoroji from the presidential chair

of the Congress in 1906. In fact the first decade of the present century witnessed a tremendous national upsurge throughout the country. Highly respected and responsible leaders like Lokamanya Tilak, Aurobindo Ghose, Lala Lajpatrai and Surendranath Banerji carried on the struggle for freedom in spite of the threat of imprisonment. Tilak had already been sentenced for sedition in 1897 and was again sentenced to six years' transportation in 1908 for the same offence. There thus began in the public life of India a new era of political suffering which gathered further momentum and volume under the leadership of Mahatma Gandhi from 1920.

The Morley-Minto reforms of 1909 may be described as the high-light of the policy of association. The number of elected members in the legislatures was increased, but in the Central Legislative Council an official majority was deliberately maintained. Nor was the franchise for its election in any way democratic. The powers of these legislatures were extremely limited. Lord Morley emphatically declared that the reforms he was sponsoring had nothing to do with responsible government involving transfer of power to any extent to Indian hands. Even after their introduction, the Government of India continued to be nothing more than a 'benevolent despotism'.

The policy of association could not satisfy the political aspirations of India. The legislatures that it created appeared ridiculous in their parliamentary garb, because they had neither the representative character nor the effective powers which are possessed by elective chambers in a parliamentary democracy. Their privileges amounted to little more than an opportunity to indulge in ineffectual criticism of some of the measures of government. Even

this privilege could not be successfully utilized because the bureaucratic Government was always able to command a clear majority of votes in the legislative councils. There was an air of unreality about their proceedings, and even sober-minded politicians confessed to a sense of futility in working such a pretence of popular democracy.

ANNOUNCEMENT OF 20 AUGUST, 1917. Within five years of the introduction of the Morley-Minto Reforms the world was convulsed by the Great War which broke out in 1914. The war was described by England and its Allies as a noble crusade for the preservation of liberty, justice and democracy, and they invited India to join in defence of the independence of smaller nations. Yet, by a painful irony, India's own status was that of a dependency held in the powerful grip of a foreign nation. This anomalous position gave a further impetus to India's demand for self-government. A vigorous agitation was naturally started in the country for the assertion of her legitimate claims to internal freedom, or Home Rule. England could no longer refuse to entertain them. On 20 August 1917 the Secretary of State for India made a momentous declaration defining the goal of British policy in India. The following are important extracts from Mr Montagu's Announcement: 'The policy of His Majesty's Government is that of the increasing association of Indians in every branch of administration and the gradual development of self-governing institutions with a view to the progressive realization of responsible government in India as an integral part of the British Empire. . . . The progress in this policy can only be achieved by successive stages. The British Government and the Government of India . . . must be the judges of the time and the measure of each advance.'

To the Indian mind this parliamentary definition of India's political destiny appeared to be disfigured by many conditional and restrictive clauses. However, in spite of these defects, the Announcement was a landmark in the history of the British administration in India. For generations together, the Englishman had sought to provide an effective, even a paternal government *for* the Indian people. But he had not acquiesced in the concept of government *by* the Indian people. Now for the first time it was decided that the Indian was to be allowed to wield political power in his own right, though to a small extent. The Secretary of State, Mr Montagu, was specially deputed to India to make personal inquiries, and in collaboration with Lord Chelmsford, the Viceroy, he prepared the famous report on which was based the Act of 1919. This Act introduced what are described as the Montford Reforms.

THE ACT OF 1919. The Act of 1919 was an attempt to implement the promise contained in the Declaration of 20 August 1917. The purely bureaucratic system was to be modified but not to be wholly abolished. The principle of political responsibility was to be definitely introduced, but the extent and scope of its action were to be limited. The changes brought about by the Montford Reforms inevitably resulted in the formation of a hybrid structure. An irresponsible executive was partially placed at the mercy of a popular legislature. Bureaucracy and democracy were strangely mixed and closely associated with each other.

There were three main concepts on which the new scheme was based. First, the central and provincial spheres were demarcated from each other with greater clarity by the Devolution Rules. A larger measure of independence was granted to the provinces. Secondly, the provincial

subjects were divided into two groups. The Reserved half was to be administered by an irremovable Executive Council as before. But the Transferred half was given for management to Ministers who were selected by the Governor from among the elected members of the Provincial Legislative Council and were fully responsible to that chamber for their actions and policy. The legislative councils themselves were greatly enlarged in size and were given a substantial majority of elected members. The franchise for their election was considerably lowered. A part of the provincial budget was placed under their control. Thirdly, though no element of responsibility was introduced in the Central Government, the number of Indians in the Executive Council was increased in practice to three. The central legislature was given the bicameral shape. The Upper House was extremely oligarchical but the Lower House was expected to be more representative of Indian political talent. A wider franchise was prescribed for its selection. A part of the Central Budget was made subject to its vote. The Legislative Assembly was given many opportunities to expose and criticize the attitude of the central executive.

THE SIMON COMMISSION. The Montford Reforms were denounced by nationalist opinion in India as being inadequate, unsatisfactory and disappointing, and there was a persistent demand for a more substantial transfer of political power to India. In response to Indian agitation His Majesty's Government sent out a Statutory Commission to India in 1928 under the presidency of Sir John Simon. Unfortunately, Parliament did not think it necessary to include a single Indian in the personnel of a Commission which was specially asked to investigate and sit in judgement upon the political aptitudes, achievements and

aspirations of India. This exclusion was keenly resented and the Simon Commission was boycotted even by the Indian Liberals. Its Report, which was published in 1930, was received with a chorus of condemnation.

In the meantime, the Labour Party which had frequently professed sympathy with Indian ambitions was established in office, if not in power, in England. Its Ministry decided that a Round Table Conference should be convened to discuss the constitutional future of India, and Indian leaders were invited to participate in its deliberations. This decision, however, did not convey the clear assurance that the ultimate object of Parliament was to confer Dominion Status on India. The Indian National Congress, therefore, declined to take part in the proceedings of the Conference and launched the Civil Disobedience Movement in earnest. The country at last came to be governed by a series of ordinances.

THE ROUND TABLE CONFERENCES. The first Round Table Conference was opened in London by King George V in the second week of November, 1930. Its deliberations lasted for ten weeks. After it had dispersed, a vigorous effort was made in India to bring about a reconciliation between the Government and the Congress. Lord Irwin, the Viceroy, held prolonged conversations with Mahatma Gandhi, and a settlement satisfactory to both parties was ultimately arrived at. Mahatma Gandhi later on proceeded to England to attend the second Round Table Conference which was convened towards the end of 1931. However, during this period the Labour Party was disrupted and had gone out of office and the Conference ended inconclusively. In 1932, the third Round Table Conference was convened in London, and it formulated its recommendations before dispersing at the end of that

year. After a good deal of deliberation and discussion following the Conference, an Act based on them was finally passed by Parliament in 1935.

THE ACT OF 1935. This Act introduced important changes in the Central and Provincial Governments in India. That part of it which pertained to the provinces and made them autonomous units came into operation from 1 April 1937. It was functioning till the advent of Independence in 1947. That part which pertained to the Central Government and which was intended to establish an all-India Federation was not however made effective at the same time. In fact on account of the complications created by the Second World War that part was never put into operation and the federal scheme embodied in it remained a dead letter. The Constitution of Republican India is to a great extent modelled on the provisions of the Act of 1935 and there is also naturally a certain amount of continuity in the principles of government and in the administrative structure even after the achievement of freedom. The following pages are therefore devoted to a short description of the constitutional machinery set up by the Act of 1935 and which was actually functioning till 1946-7.

TWO SECTIONS OF THE ADMINISTRATION. Unlike most of the pre-British conquerors of India, the British people did not abandon their own country and permanently settle in the land of their conquest. The Mussalman invaders of India, for instance, made India their home even though they originally belonged to Central Asia. To the British people Great Britain was the vital centre of all imperial activity; that little island was the point of convergence of a vast empire. The British ruled over India from Britain, and the Indian administrative structure had therefore to be based on two distinct entities.

The ultimate authority was naturally exercised by the sovereign rulers from their island home. They appointed an agent in England, called the Secretary of State for India, to function on their behalf and to keep in the closest touch with them. In this agent were vested the supreme powers of supervision over the Indian officials. On the other hand, the work of actually governing the conquered territory was entrusted to a body of officers who had to work and live in India itself. They were the men on the spot who were in direct contact with the subject population.

The Indian administrative machine was therefore divided into two sections. One operated in India, and was of course much the bigger in bulk and extent. It was composed of the Government of India and the Provincial Governments. The other operated in England and served as the instrument for enforcing the will of the sovereign. It consisted of the Secretary of State, his Advisers, and their establishment known as the India Office.

2

THE SECRETARY OF STATE FOR INDIA

RESPONSIBILITY TO PARLIAMENT. The East India Company was abolished in 1858 and control over Indian administration was vested thereafter in the Crown and Parliament of Britain. For the adequate and efficient fulfilment of those responsibilities a new post of a principal Secretary of State was created. He had to be a Member of Parliament and was also given the exalted status of a Cabinet Minister, though it was not necessary that he should have acquired first-hand knowledge of India and its problems before he accepted office. Like all Ministers in the Cabinet, the Secretary of State for India was responsible, in the first instance, to the Prime Minister and to his immediate ministerial colleagues. He had to keep them adequately informed of all new lines of action that he might propose to adopt in his department. Their assent and support were required for all important innovations. The relations of the Secretary of State with Parliament were those of servant with master. He was essentially the interpreter of the parliamentary will and the instrument of its authority. His obedience to that body was absolute and complete. Any member of that chamber could put questions to him and he had to supply all information and give satisfactory explanations. He was liable to dismissal by an adverse vote of the legislature. He came into office with his party and went out with it. The maximum period of office that he could enjoy at a stretch was five years, which was the life of the House of Commons.

UNDER-SECRETARIES. The Secretary of State for India, like other Cabinet Ministers, was helped in his work by two assistants known as Under-Secretaries. One of them filled a political and the other a bureaucratic role. The Parliamentary Under-Secretary had to be a Member of Parliament and it was his duty to expound the policy and actions of the Government on the floor of the legislature. On the other hand, the Permanent Under-Secretary was not a politician and was debarred from being a Member of Parliament. He was an official of the Civil Service and was guaranteed fixity of tenure during good behaviour. At the end of a long and distinguished service in his department he was selected to be its executive head. Because of his long experience he was a store-house of expert knowledge which his political superior, the Secretary of State, could consult with profit. The large official establishment maintained for the Secretary of State was known as the India Office. The total number of its personnel was about 300 and all of them were recruited in Britain.

SALARY. The salary of the Secretary of State was a charge on the revenues of India as late as the Montford Reforms, because it was felt by the nineteenth century British statesmen that the expenses of keeping the Indian estate ought to be debited to the estate itself. It was argued that the British citizen should not be financially penalized for creating an agency to supervise the administration of a subject country. Such a calculation was unjust because it ignored the gains which accrued from the conquest. It was typical of the antiquated colonial doctrine which looked upon a colony or a conquered territory as the private property of the mother country. By the Act of 1919 the salary of the Secretary of State was accepted as an obligation of the British public and began to be provided by

Parliament, though the other expenses incurred on the establishment of the India Office continued to be a charge upon the revenues of India. The Act of 1935 did not make any substantial change in this position, excepting a slight alteration in theoretical appearances.

POWERS. The powers of the Secretary of State were extremely comprehensive in range and included every important item. Even the Act of 1919 which introduced partial responsible government in the provinces stated clearly that the Secretary of State might superintend, direct and control all acts, operations and concerns which related to the government or the revenues of India. The Act of 1935 introduced a new constitutional structure with the idea of transferring political power into the hands of Indians as much as possible. The British Indian provinces were shaped into autonomous units and ministerial government was promised for the Centre. The Act therefore omitted any mention of the Secretary of State's powers of superintendence, direction and control. However, the practical utility of such an academic negation did not necessarily prove to be great because the Act had laid down that whenever the Governor-General or the Governor was required to act in his discretion or in his individual judgement, he had to be under the general control of, and comply with such general directions as might from time to time be given to him by the Secretary of State and the Governor-General respectively. The number of occasions on which and the purposes for which these authorities were required to act in their discretion or to exercise their individual judgement was very large. Every important subject whether legislative, administrative or financial was included in them.

THE INDIA COUNCIL AND THE ADVISERS. The Secretary of

State was not expected to possess any considerable knowledge of Indian affairs. More often than not, he was almost totally ignorant about them. Yet he was called upon to control the policies and even to superintend the details of the Indian administration. Every important item of legislation, executive action, and finance was required to be submitted for his previous approval and sanction. It was a curious combination of power and ignorance. Parliament, therefore, gave him the assistance of a Council to advise and assist him. It was composed of persons who had to their credit long years of service in India, and had ample knowledge and experience of Indian conditions. Indians, however, did not like this Council because the retired members of the Indian Services who formed its membership represented a mischievous concentration of reactionary opinions and ideas so far as India's political aspirations were concerned. The Act of 1935 abolished the Council, but created in its place officers who were called Advisers, and there was little fundamental difference between them and the Council which they supplanted. It must be noted that though the Advisers were expected to render valuable assistance to the Secretary of State, they did not enjoy any status of equality with him. It was entirely within his discretion whether to consult them or not to consult them, and whether to accept or not to accept the advice that they tendered, except in regard to matters concerning the Services, in which case their opinions were binding upon the Secretary of State.

HIGH COMMISSIONER. The post of the High Commissioner for India was created for the first time by the Act of 1919. The Indian Government, like all Governments, required many different kinds of equipment in the performance of its civil and military duties. The annual value ran

into crores of rupees. This vast expenditure on the purchases made could have been so organized to have become an effective stimulus for the starting of new industrial ventures in the country and for strengthening them. Unfortunately, the alien bureaucracy which ruled over India did not consider this subject of India's store purchases in terms of the industrial advancement of India. Orders for goods worth huge amounts of money were placed year after year outside the country. London became the chief venue of purchase and the Secretary of State took over the responsibility of making the purchases. As England itself was a great industrial country and as the British manufacturers required markets for the disposal of their goods, it was alleged that the Secretary of State in making the purchases showed preference for British goods even when similar goods were available outside Britain at lower cost. This inevitably inflicted a great monetary loss on India and imposed a drain on its wealth for the benefit of the producer in the country of the conqueror. The authorities in India, who were all Englishmen, were not likely to feel the injustice of this position very keenly. And even if sometimes they did, they were powerless to prevent it. They could not question the discretion of the Secretary of State who was their constitutional superior and who had also taken it upon himself to work as their commercial agent.

The Act of 1919 tried to remove this grievance of Indians by separating the political and the commercial functions of the Secretary of State and by entrusting the latter to a High Commissioner. His office was stationed in London; he was appointed by the Government of India; and his salary was paid out of Indian revenues. He was entirely a servant of the Indian Government and amenable to their discipline and direction. It was his principal duty to

procure for them and for the Provincial Governments all those articles which they were required to import from abroad. He was expected to invite tenders for the supply of goods from all the important producing countries and to secure the lowest competitive prices. Irrespective of political or any other kind of pressure his insistence had to be exclusively on India's gain and India's benefit. To what extent in actual practice the High Commissioner was able to safeguard India's national interest and to make his purchases only in the cheapest markets, it is not easy to say. The Indian Government to whom he was responsible was itself composed of a foreign bureaucracy appointed by the British masters and not responsible to the Indian people, and the High Commissioner would hardly find it feasible to disregard its inclinations. In fact, there was reason to believe that pressure was brought on him to observe some kind of preferential discrimination in favour of British and British Empire products.

3

PARLIAMENTARY CONTROL OVER INDIAN AFFAIRS

THE LEGAL POSITION. It would be interesting to understand the nature of the relationship that existed between Parliament and India in its varying phases during the days of British rule. The sovereignty of the British Government and Parliament over the Indian Empire was established by right of conquest. In strict legal theory, there were no restrictions or limitations on that sovereignty as long as the conquerors held the country. The form of the Indian Constitution was determined by Parliament. The daily routine of its administration was controlled by Parliament's representative and servant, the Secretary of State for India. It was repeatedly emphasized by the British politician that Parliament must be the sole judge of the time, of the nature, and of the degree of each stage of advance which India may be allowed to make.

Liberal-minded British statesmen had often proclaimed that Britain held India not for the purposes of imperialistic exploitation but only for the purpose of educating its backward people and raising them to the level of the most civilized countries of the world. Their ultimate objective was to train Indians for self-government and transfer political power to them whenever they were found fit for it. The Announcement of 20 August 1917 enunciated the ideal of responsible government for India, to be realized in gradual stages, and the Act of 1919 was a perceptible step towards that distant ideal. The Act of 1935 went

further in the same direction by introducing full provincial autonomy and providing for partial responsible government at the Centre.

RELAXATION OF CONTROL. The grant of political rights and privileges to India necessarily implied the withdrawal of parliamentary control over Indian affairs to the extent of that grant. If the transfer of power to Indians was to be genuine and real, Parliament could not simultaneously retain that very power in its own possession. The Montford report therefore clearly suggested that in respect of all matters in which responsibility was entrusted to representative bodies in India, Parliament should be prepared to forego the exercise of its own powers. This meant a process of self-effacement for Parliament from the Indian scene, but one which had to be deliberately pursued, *pari passu* with the development of responsible institutions in India.

THE METHOD OF CONVENTIONS. However, no specific provision for curtailing the authority of Parliament or of the Secretary of State was included either in the Act of 1919 or in the Act of 1935. Such a legal restraint was felt to be inconsistent with British constitutional traditions and repugnant to the British mind. But what was not effected by the letter of the law was sought to be achieved by the establishment of conventions. Thus it was prescribed by a rule made under the Act of 1919 that in respect of subjects transferred to Ministers in the provinces, the power of the Secretary of State to superintend and control should be strictly limited to the minimum. In respect of the Reserved provincial subjects and Central subjects where responsibility was not transferred to Indians the following undertaking was officially given: if on any matter of purely Indian interest the executive Governments in India and

the Indian legislatures were in agreement, the Secretary of State and Parliament would not ordinarily interfere with the decisions arrived at in India, even if their views were opposed to these decisions. The Joint Parliamentary Committee which reported on the Bill of 1919 mentioned one particular instance in which the operation of such a convention and the application of the principle of non-interference was very necessary. The belief, they said, was widespread that India's fiscal policy was dictated from Whitehall and that it was intended to benefit Britain at the cost of India. In order to remove any grounds for such a suspicion the convention was proposed and accepted that whenever on any fiscal question the Indian Government and the Indian legislature were in agreement, the Secretary of State and Parliament should not ordinarily interfere. This was described as the Fiscal Autonomy Convention, which was repeatedly pointed to as having conferred full fiscal freedom on India.

Its Defects. It was, however, obvious that the so-called autonomy granted by the method of conventions could not have any great practical value, because the conditions imposed for its realization were almost impossible of fulfilment. Agreement between the Government of India which was an irresponsible alien bureaucracy drawn from a conquering nation and the elected Indian legislature reflecting the aspirations and the distress of a subject people was, in the nature of things, a rare exception rather than a normal condition. A convention which presupposed agreement between two parties which were inevitably accustomed more to oppose than to agree with each other was an empty illusion. Only once after the Montford Reforms was action actually taken in accordance with this convention and that too was taken by Mr Montagu

himself. But the precedent established by him was really too exceptional in the circumstances of its origin to be capable of frequent repetition. The expression 'purely Indian interest, taking India to be an integral part of the British Empire' was too vague. The economic and political self-assertion of India was bound to affect other parts of the Empire and also England itself. The idea of a fiscal autonomy burdened with such wide limitations was discovered to be unreal.

AFTER THE ACT OF 1935. Things did not materially change even after the Act of 1935. The Joint Parliamentary Committee which reported on the 1935 Bill did, indeed, pedantically declare that after the introduction of the reform contemplated by that measure there would be no need for the existence of any convention because India would be allowed to enjoy complete fiscal freedom. However, they were also emphatic in declaring that this freedom could not be utilized for the purpose of injuring and excluding British trade. A clause was, therefore, added to the Special Responsibilities of the Governor-General enjoining him to see that goods of the United Kingdom or of Burmese origin imported into India were not subjected to discriminatory or penal treatment. A whole chapter of the Act of 1935 was also specially devoted to an elaboration of the same point. The Joint Parliamentary Committee's explanatory comment on this point is illuminating as giving a clear idea of the intentions of Parliament.

RECIPROCITY. They said 'The United Kingdom and India must approach their trade problems in a spirit of reciprocity, which views the trade between the two countries as a whole. . . . The reciprocity consists in a deliberate effort to expand the whole range of their trade with each other to the fullest possible extent compatible with the

interests of their own people. The conception does not preclude either partner from entering into special agreements with other countries . . . but it does imply that when either partner is considering to what extent it can offer special advantages to a third country without injustice to the other partner, it will have regard to the general range of benefits secured to it by the partnership, and not merely to the usefulness of the partnership in relation to the particular commodity under consideration at the moment.' There could hardly be a wider definition of the concept of reciprocity than what is contained in this exposition. 'The general range of benefits secured by the partnership' could cover any conceivable item under the sun, and could be conveniently put forward as an obstacle in the exercise by India of its so-called fiscal autonomy. The concept of reciprocity really implies a voluntary agreement between two nations. Each must be free to decide what will be most beneficial to itself, and in the light of that conviction to enter into specific contracts with the other. There is no room for compulsion or force in such an agreement. A country's participation in a scheme embodying this principle presupposes complete freedom from outside control. And as long as that freedom was not predicated for India, reciprocity was only a euphemism for British dictation.

After the experience of the working of the Act of 1935 for about three years it could be said that, on the whole, in actual practice, the ministerial side of provincial administration was no longer subject to the supervision and control of the authorities in the United Kingdom. The British Premier, Mr Neville Chamberlain, made it clear in the House of Commons that as far as ministers responsible to the provincial legislatures for the government of

the provinces were concerned, it was entirely inappropriate if Parliament was to call in question or criticize their policies and activities; the Secretary of State had no longer any responsibility in matters within the control of the provincial Ministers. Mr Chamberlain also suggested that even in the sphere in which the final authority was vested in Parliament, the right of the latter to interfere ought to be used with discretion and restraint. Since the transference of power into Indian hands in 1947, the control of the British Parliament over Indian affairs has of course altogether ceased.

4

THE CENTRAL EXECUTIVE: GOVERNOR-GENERAL

THE GOVERNOR-GENERAL. The Act of 1935 proposed certain radical changes in the structure of the Government of India. The unitary system was to be transformed into a federation. But, for various reasons, this part of the Act was not made operative simultaneously with the introduction of provincial autonomy. The legislative skeleton of the Indian Federation was provided by the Act, but it was not quickened into life. The Constitution of the Government of India as framed by the Act of 1919 but with certain necessary modifications continued to function till the advent of independence in 1947. The executive side of the Central Government was composed of the Governor-General of India and his Executive Council.

HISTORICAL. Before the middle of the eighteenth century, the territorial possessions of the Company were few and they were merely the accidents of its trade. Bombay, Madras and Calcutta were the principal centres of the Company's business, and separate Governors, assisted by Councils, were appointed for those areas for carrying on trade. In status and authority these three Governors stood on a level of perfect equality. When the Company began to fight wars and build an empire in India, it became necessary to co-ordinate its policy and resources in different parts of the Indian continent. A unity of command and direction became absolutely essential in all the activities of the Company. The Regulating Act of

1774 created the office of Governor-General for the Company's dominions in India, and Warren Hastings became its first distinguished holder. The importance and responsibilities of the office increased with the increase in the Company's authority. The Acts of 1784 and 1833 reiterated the supreme position of the Governor-General in the Indian polity. Strong-willed personalities like Cornwallis, Wellesley, Lord Hastings and Dalhousie established traditions of power and prestige which exalted the office of Governor-General to an almost regal and certainly awe-inspiring eminence. After 1858, the Governor-General was invested with the additional and unique dignity of the sovereign's representative, and soon came to be designated Viceroy of India.

APPOINTMENT AND QUALIFICATIONS. The Governor-General was appointed by His Majesty, acting on the advice of his Prime Minister. He was invariably chosen from the British aristocracy and often possessed high family connexions. Usually, he had made his mark as administrator, statesman or politician before he was invited to go out to India as Viceroy. Often he had ample parliamentary experience to his credit. The Governor-General held office for a period of five years. It was essentially a non-party office. The dignitary who held it did not change with a change of ministry in England. Continuity of executive government and freedom from the disturbing effects of purely artificial fluctuations were ensured by this salutary practice. Thanks to the high standard of British political sagacity and public morals, the Government of India was not allowed to be turned into a shuttlecock for the sport of the party leaders of Great Britain.

SALARY AND ALLOWANCES. The salary of the Governor-

General was Rs 2,56,000 a year. Besides the salary, there were allowances of various kinds. The actual figures provided in the budget for 1937-8 were as follows: salary Rs 2,56,000; sumptuary allowance Rs 40,000; expenditure from contract allowance, Rs 1,44,300; conveyance and motor cars, Rs 43,000; Private Secretary and Department, Rs 2,63,800; Military Secretary and Department, Rs 3,22,400; tour expenses, special trains, etc., Rs 4,70,000. In addition, the Band and the Bodyguard cost Rs 1,84,600. A certain amount was also spent on the maintenance of viceregal residences. An Outfit and Equipment allowance of £5,000 was paid to the Governor-General when he was first appointed. It has been calculated that the annual average cost of the Governor-General, his office and maintenance, would amount to over Rs 7,62,000.

RELATIONS WITH THE EXECUTIVE COUNCIL. The duties and powers of the Governor-General were numerous and varied. He was the president of his Executive Council and had power to make rules and regulations for conducting the meetings of the Council. He distributed work among its different members. In case of an equality of votes in the Council on any question, he could give a casting vote. He exercised general supervision over the work of the Executive Councillors and could make himself closely acquainted with the details of departmental administration, either directly from the members or from their immediate subordinates, the Secretaries. These officers enjoyed a unique and anomalous constitutional position. They had direct access to the Viceroy over the heads of their immediate superiors. In the selection of members to the Executive Council, the opinion and influence of the Governor-General counted for a great deal. He had also the power of appointing Governors

of provinces other than Bombay, Madras and Bengal. A large amount of important patronage was thus in his hands.

Before its expansion in October 1941, the Executive Council of the Governor-General was composed to a large extent of bureaucratic officials. Membership of it was the prize which was earned at the end of prolonged service in the different departments of Government. There was an atmosphere of discipline and submission in the usual routine of its working. It is otherwise with the British Cabinet, which has more decided traditions of equality and independence. The Governor-General of India could, indeed, be technically described as only one among several members of the Executive Council. He had an additional or casting vote in case of a tie. Except on the rare occasions on which he chose to exercise his emergency powers, he might give the impression of being only first among equals. However, the president of the Executive Council was also the Governor-General and Viceroy, and the ramifications of this combination were extremely formidable.

Warren Hastings was very unfortunate in his relations with the Executive Council. Some of its members adopted an attitude of implacable hostility to him. Cornwallis became wiser by the sad experience of his predecessor. Before he accepted the office of Governor-General, he made the important stipulation that the Governor-General should be vested with power to overrule the whole or part of his Council whenever he was convinced of the futility and harmful nature of its opinion. The demand was granted and Parliament passed a special Act in 1786 to that effect. Ordinarily, every measure brought before the Executive Council required the assent of the majority

of its members in order that it should be passed. It may be that the Viceroy found himself out-voted on occasions. Normally, he submitted to the wishes of the majority. But he had the exceptional power of overriding and setting aside its decisions. This power was indeed very rarely used. In fact, since its creation, it was used only once, in 1879, by Lord Lytton to reduce the cotton duties. But its mere presence was enough to chasten any particular petulance on the part of the Executive Council.

RELATIONS WITH THE LEGISLATURE. The Governor-General had considerable powers with reference to the legislature. He could address both chambers of the Central Legislature; he summoned, prorogued and dissolved them; he could extend the period of their tenure in special circumstances. He appointed a date and place to hold fresh elections; and also a date and place for holding sessions for either chamber. His previous assent was required for the moving of certain kinds of Bills in the Central Legislature. He could stop the proceedings of either of the chambers on any Bill, clause or amendment, if he felt that the discussion was likely to affect the safety and the tranquillity of the Raj. He could send Bills back for reconsideration by the legislature. His assent was required for all Bills passed by the Central Legislature before they could have the force of law. This was also true of certain provincial legislation. He could require certain specified Bills to be reserved for the consideration of His Majesty-in-Council.

CERTIFICATION. In addition to these more or less routine powers, an exceptional overriding veto against the decisions of the legislature was bestowed upon the Governor-General of India by the Act of 1919. It corresponded to a similar veto possessed by him against the Executive

Council. 'Where either chamber refuses leave to introduce or fails to pass in a form recommended by the Governor-General, any Bill, the Governor-General may certify that the passage of the Bill is essential for the safety, tranquillity or interests of British India', and thereupon, even if the legislative chambers refused to pass such a Bill, it could become an Act by the mere signature of the Governor-General.

A grave constitutional anomaly was thus created. Mr Montagu and Parliament had evolved a peculiar constitutional plan. It attempted to combine two systems which are inherently incompatible. The legislatures were materially increased in size and were made more democratic and representative. Larger powers were conferred upon them. Yet the executive was to be in no sense subordinate to the legislature. It was to continue to be responsible only to a Parliament functioning in a distant country. The severe logic of such an incongruous blend of conflicting constitutional principles was self-evident. A serious difference of opinion between the two vital parts of Government must lead to a complete deadlock and bring the whole machinery to a standstill. An effective authority had to be provided to bring such an impasse to an end. As the executive was ultimately responsible to Parliament and not to the Indian legislature, it must be enabled, if necessary, to assert itself against the latter, for the liquidation of those responsibilities. Given the hypothesis that full political freedom was not to be bestowed upon India, the deduction drawn above was unavoidable. That the certification was meant to be a real power and not a mere ornamental possession was amply proved by experience. It appeared to have been interpreted as a normal instrument which could be freely

used from day to day. Yet constant exercise of such a power did not fail to prove irritating to Indian thought and exciting to Indian sentiment.

ORDINANCES. Besides possessing these powers, the Governor-General was also authorized to make and promulgate ordinances for the peace and good government of British India or any part thereof. An ordinance so made had the force of law as much as if it were an Act passed by the legislature. The period of its application was not to exceed six months at a time, though it could be renewed for a further succession of such periods.

CROWN'S REPRESENTATIVE. The Governor-General of India was not only the head of the administration of the land. He personified in himself the British sovereign and represented his master in the unavoidable absence of the latter from the land of his governance. He therefore enjoyed all the dignity and prestige and special privileges which the sovereign himself would have enjoyed if he had chosen to stay in India. He had the prerogative of mercy and pardon. On behalf of his sovereign, he received homage from the Indian princes. To them, he symbolized the Crown and all the unlimited sovereignty of the Crown.

IMPORTANCE OF THE OFFICE. That the cumulative influence of this lofty official upon the administration of India was bound to be immense was obvious. His large powers, ordinary and extraordinary, as the head of the administration, his exalted social status as the direct representative of the sovereign, and the large and lucrative patronage in his possession, were factors which gave him supreme eminence in the State. If he was endowed with a master mind and an assertive temperament, his views could colour every department of administration. The

Prime Minister of England, presiding over the British Cabinet, appears to be only first among equals, a leader of his peers. The Viceroy of India, on the other hand, had the appearance more of a superior than of an equal. Constitutionally, the distance between him and his bureaucratic colleagues was far greater and much more fundamental than that between the Prime Minister and his colleagues in the Cabinet.

5

THE EXECUTIVE COUNCIL

Constitution. The Governor-General's Executive Council would have vanished from the Indian constitutional picture if the Federation of India as prescribed by the Act of 1935 had come to be inaugurated. Its place would then have been taken by a body of Counsellors and the federal Ministry. But that did not happen. The Council was created by the Regulating Act in 1774, and its last constitution was prescribed by the Ninth Schedule of the Act of 1935. Its members were appointed by His Majesty and no specific limit was put on their number. It was therefore possible to enlarge the Executive Council without any amendment of the Act. The number of members after the Montford Reforms was eight, including the Governor-General and the Commander-in-Chief. At least three of the members were required to be persons who were for not less than ten years in the service of the Crown in India. In 1946 this restriction was abolished by a special Act of Parliament. One member had to be a barrister of England or Ireland or an advocate of Scotland or a pleader of an Indian High Court of not less than ten years' standing. From 1921 to 1941 the number of Indians in the Council was three. In strict legal theory, there could be no objection to all the members of the Council being Indians. In fact, from September 1946 they were all Indians.

Expansion after 1941. An important development in regard to the Executive Council took place at the end of

October 1941. The federal part of the Act of 1935 had not been made operative simultaneously with the inauguration of provincial autonomy in April 1937. There was keen disappointment in India at this turn of events. It had been hoped that a national Government controlled by the legislature could and would be set up at the centre to meet the grave emergency of World War II. The proposal was, however, ruled out. His Majesty's Government were only prepared to sanction whatever reform was possible as an interim measure within the framework of the existing Constitution. It was felt that even if no radical change could be introduced in the constitutional status of the Council, its substantial expansion and Indianization could go a long way towards transference of authority into the hands of Indians, particularly if the Indian members were placed in a clear majority. Accordingly, the Executive Council was enlarged by the addition of five new seats, and the appointment of five Indians to hold them was also announced. This meant an increase in the total number of the members of the Council, excluding the Viceroy, to twelve, of whom eight were Indians. The Council thus expanded and constituted began to function from October 1941. Its membership was further increased to fifteen in July 1942, one seat being given to a non-official European. This of course was not the democratic and responsible government demanded by Indians. But it was claimed that the new development marked a change if not in the form of the Constitution at least in its spirit. For the first time in the history of British India, the work of government was entrusted to a body which contained a majority of Indians, though they could not be described as the elected representatives of the Indian people.

With the conclusion of World War II in 1945 and the advent of the Labour Party to power in England a little earlier, the tempo of India's political life gathered fresh momentum. Indian leaders who were confined in jails were released. Popular Ministries which had ceased to function in a majority of the provinces since 1939 were restored to power in 1946. The question of conferring full freedom, and even complete independence, on India was taken up for consideration in right earnest. The Cabinet Mission came out to India in March 1946, and made proposals for setting up machinery for framing the future constitution of India. In the context of all these developments, a non-responsible executive, devoid of the backing and support of the important political parties, functioning at the Centre even during the intervening period, was an obvious incongruity and embarrassment.

INTERIM GOVERNMENT. The Viceroy, therefore, invited leaders of Indian public opinion and of the largest political parties to form the Government. The statutory obligation that at least three members of the Viceroy's Council must be officials was removed by a parliamentary amendment of the Act of 1935. All the members of the Council could therefore be non-officials and all departments of Government including defence and external affairs were offered to them. On 2 September 1946 an Interim Government was formed by Congress leaders headed by Pandit Jawaharlal Nehru who was appointed Vice-President of the Council. The Muslim League joined six weeks later.

The whole idea of this arrangement was that in fact if not in law a real popular Government with full powers would function at the Centre. The Viceroy would voluntarily abstain from using his powers and entrust the whole responsibility of government to the Executive Council.

The Muslim League, however, did not accept the position that the Council was a cabinet; they were opposed to working on the principle of collective responsibility. The Congress and the League sections of the Council began working independently of each other. But in spite of these drawbacks the formation of such an Interim Government marked an epoch-making stage in India's political history. It amounted to an abeyance of the authority of foreign rulers in all subjects of government including external affairs and defence, and an assurance of the transfer of that authority into Indian hands.

POWERS AND FUNCTIONS. The superintendence, direction and control of the civil and military government of India were vested in the Governor-General-in-Council till the Act of 1935. Every provincial government had to obey that authority and to keep members of the Council constantly and diligently informed of all matters of importance in its administration. After the introduction of provincial autonomy as envisaged by the Act of 1935, the powers of the Governor-General-in-Council were necessarily reduced so as to make them consistent with the autonomous status of the provinces. The general power of superintendence, direction and control over the civil and military government in India was abolished.

The executive authority of the Governor-General-in-Council extended to subjects mentioned in the Central or Federal Legislative List. It did not extend, save as expressly provided for in the Act, in any province to subjects mentioned in the Provincial Legislative List. The formation of new provinces was also no longer within their competence. In the sphere in which political control was transferred to the people of the province the authority of the Governor-General-in-Council was considerably

withdrawn. The tenure of office of a member of the Executive Council was fixed by a well-established custom at five years. The salary of a member of the Council used to be Rs 80,000 per year till 1941 but was thereafter reduced to Rs 60,000 per year.

METHOD OF WORKING. Originally the Executive Council of the Governor-General 'worked together as a board and decided all questions by a majority of votes'. There was no systematic distribution of work among its members. Every question that came up for the disposal of the Governor-General-in-Council was disposed of by the Council as a whole, sitting collectively. There was no allocation of departments to individual members.

Lord Canning decided to abandon this system. He distributed the ordinary work of the departments among the members and laid down that only the more important cases were to be referred to the Governor-General or dealt with collectively by the Council. This was what was known as the 'portfolio system'. Under the working of this system, each member, in regard to his own department or departments, had the final voice in ordinary departmental matters. He was councillor and administrator together. Any subject of special importance or one in which it was proposed to overrule the views of a provincial government had to be referred to the Viceroy and the Council; and so had matters which originated in one department but also affected other departments. In the nature of things, the Viceroy's Executive Council could not be described as a cabinet in the British sense. For a long number of years its composition was entirely bureaucratic, and even the inclusion of a few non-official Indians did not make any difference in that status. It could not have worked, and

did not work, on the principle of collective responsibility.

THE SECRETARIES. Immediately subordinate to the member in charge was the officer known as the Secretary. He was in charge of the departmental office. His position corresponded to that of a Permanent Under-Secretary of State in the United Kingdom. He was required to attend on the Viceroy usually once a week and to discuss with him all matters of importance arising in his department. Thus the constitutional position which he enjoyed was unique. He was a subordinate, having the special privilege of direct access to the superior of his immediate superior. The system was a remnant of the old days when it was considered desirable to keep a check over the actions and the departmental independence of the Executive Councillors. The Governor-General as the head of the administration was therefore empowered to keep in direct touch with departmental working through the Secretaries.

COMPARISON WITH BRITISH MINISTERS. It is obvious that an English Minister differed essentially from a member of the Indian Executive Council. The former is a politician first and an administrative officer afterwards. English Ministers are not lifelong bureaucratic servants; persons in Government service are precluded from taking seats in Parliament and therefore in the Cabinet. Things were different in India till the expansion of the Council in October 1941. A few Indian public men could find a place in the Council, if chosen to fill the appointments by the Viceroy. Others were selected from the most successful servants in the administration. Elevation to the Executive Council was among the principal attractions of the Indian Civil Service. Yet the initiative and independence, characteristic of a body like the British Cabinet, were naturally absent from the Executive Council as a whole

in India, nor did its members possess that sense of equality which permeates the relations of the English Ministers with their chief, the Prime Minister.

Much of course depended upon the head. He was a stranger to the land which he was sent out to rule. He set out to work with a bureaucracy which had crystallized traditions. It supplied the expert knowledge about men and things in India, obtained after prolonged years of service on the spot. The claims of such a body to be recognized as an authoritative and correct guide could not be lightly disregarded. However, to a Viceroy endowed with a distinct individuality and vigour of will, the constitutional atmosphere of the Council was congenial to the development of his personal influence and the acceptance of his lead in all matters of policy and detail. All the same, the assistance of the Executive Council was indispensable to the Viceroy in all circumstances. And except under very abnormal circumstances, no Viceroy would think of rejecting its decision.

6

THE CENTRAL LEGISLATURE

HISTORICAL. The Regulating Act conferred upon the Governor-General and his Executive Council the power of making regulations or laws for the Company's dominions in India. The problems and requirements of a growing empire soon made it necessary to assign the work to a specialist, and a Law Member was appointed to the Executive Council in 1833. From 1861 a few non-official Indians came to be added to that Council when it sat for the purpose of making laws. Some of these members were allowed to be elected by the Acts of 1892 and 1909, and the deliberative powers of the Council were increased. In those days of course there was no question of the executive being put under the control of the legislature.

The Montford Reforms were supposed to be the first instalment of self-government promised to India by the Announcement of August 1917. The constitution and status of the legislatures as proposed by them had a faint and shadowy background of political responsibility. The old Supreme Legislative Council was replaced by two bodies, the Council of State and the Legislative Assembly. A large elective element was introduced in them and they were granted more importance and powers than their predecessors had enjoyed. The Montagu-Chelmsford Reforms were superseded by the Act of 1935; but as the federal part of the Act was not made operative, the Central legislative chambers as they existed since the Act of 1919 continued to function. Their constitution, powers and

procedure during the transitional period were defined in the Ninth Schedule of the Act of 1935. Before giving a detailed account of the two chambers it will be pertinent to describe the different kinds of electorates that existed in India in the days of British rule, but which have now almost completely disappeared. They were mainly based on qualifications either of property or community or special interests. Residence was also an important factor.

Electorates in India

A general electorate was one in which no account was taken of the race or community of the voter. The electoral law prescribed certain property and other qualifications, and all citizens who possessed them were entitled to vote, irrespective of caste, creed and religion. Residence in a definite territorial area, which defined the geographical limits of the electorate, was of course essential.

NON-MOHAMMEDAN CONSTITUENCY. In India, the nearest approach to a general electorate was found in the non-Mohammedan constituency. It consisted of all enfranchised persons, other than Mohammedans, in any electoral area. It might thus be composed of Hindus, Parsees, Jews, Christians and others, all placed together in one group, provided they satisfied the conditions about the franchise.

COMMUNAL ELECTORATES. The concept of a communal electorate was different. Here the very first condition which was essential to entitle a person to a vote was that he must belong to a particular community. Being a member of that community, he had further to satisfy the conditions of the franchise as fixed by the electoral law. Persons not belonging to that community were entirely excluded from the electorate. In India, communal electorates were conceded to Moham-

medans throughout the land, to Sikhs in the Punjab and to Europeans in important cities and plantations. Those who voted in these constituencies and the candidates who contested the seats had to belong to the Mohammedan, Sikh and European communities respectively. Others could neither vote nor stand for election in these electorates.

MIXED ELECTORATES WITH RESERVED SEATS. It was found possible to devise a system which was a compromise between the general and communal principles and combined both of them. This was known as the system of mixed electorates with reservation of seats for particular communities. In such a system it was not necessary that the voters or electors should belong to a particular religion or race. The electorate contained the names of all those who possessed the requisite franchise, though they belonged to different creeds and communities. But it was also laid down that out of the total number of seats which had to be filled by election a certain number must be held by members of a particular community. They were also free to contest and succeed in securing any number of seats over and above those reserved for them.

In a communal electorate the candidate had to win the confidence of the members of his own community only. In a mixed electorate with reservation of seats, he had to look for votes even outside his community and endeavour to be popular with all. In India, the privilege of reservation of seats for their own community was granted to the Maratha caste in the Bombay Deccan in elections to the Bombay Legislative Council by the Act of 1919, but was taken away by the Act of 1935. The Nehru Report advocated the extension of the same system throughout the whole country in place of the existing communal electorates.

A considerable body of enlightened public opinion also supported the same view in the interests of a consolidated Indian nationalism.

SPECIAL ELECTORATES. Besides these types there was another type known as 'special constituencies'. These were intended to represent certain special interests in the country in their own right, and independently. The landed aristocracy of the country, the industry, trade and commerce of the country, educational institutions such as universities, were all special interests which had to be properly safeguarded and which were given special recognition as entities useful and beneficial to the State. They were therefore formed into constituencies by themselves. Such a constituency consisted of all persons who were united by the tie of common interest, irrespective of community or race. They were thus different from communal constituencies.

In India several universities were given the right of sending their own representatives to the legislature. Similarly, European Chambers of Commerce, Indian Merchants' Chambers and Bureaux, Millowners' Associations, Sardars and Inamdars were created into constituencies by themselves. Every person, irrespective of community or religion, who was a recognized constituent of these bodies could vote in elections which were held for the return of their representatives.

WHY COMMUNAL ELECTORATES WERE CREATED. Communal electorates were introduced in India as the most convenient and satisfactory means which the British imperialist could devise for protecting the interests of minorities. One of the greatest dangers of democracy is that it may degenerate into a mere tyrannical rule of the majority over the minority and the suppression of

the latter. This danger is likely to be aggravated in a country like India with its many races, religions, languages and conflicting historical traditions. Some effective safe-guard was considered necessary under these circumstances. The Morley-Minto Reforms of 1909 therefore decreed that the Indian electorates should be divided into two parts—non-Mohammedan and Mohammedan—on the principle of religion. To such exclusive religious groups was given the right of sending representatives from among themselves to the legislatures. Weightage in representation was given to the minority community, that is, the Muslims.

THEIR DANGEROUS EFFECTS. That communal electorates have a tendency to emphasize and perpetuate the existing racial and religious differences, and to prevent the growth of a healthy nationalism, will be readily admitted by even a casual observer. By putting a premium upon communality they positively discourage any tendency to a political fusion of the different communities, and engender a narrower and more selfish angle of vision. The communal and religious antagonism in India is attributed by many eminent Indians to the existence of communal electorates. However, communal electorates became an accomplished fact in Indian polity and it was extremely difficult to undo what was done. They had acquired the strength of a vested interest. The minority was reluctant to part with a privilege which had been in its possession for many years. However, after the achievement of independence they were abolished by the Constituent Assembly and do not find a place in the Constitution of the Republic of India.

The Council of State

The Council of State in India corresponded to the

upper chambers of other countries. The total number of its members was 60. Out of these, 33 were elected by various constituencies and 27 were nominated by the Government. Of the nominated members, not more than 20 were to be officials. The Council of State was a part of the Central Legislature and its electorate was comprised within the territorial limits of the whole of British India. The existing political divisions were taken as units, and seats were assigned to them approximately in proportion to their population, to their territorial extent and so on.

The great diversity of political and economic conditions in the various provinces made a uniform franchise for a chamber of the Central Legislature almost an impossibility. The franchise for the Council of State therefore was different in the different provinces. This body was intended to serve the purpose of an upper and revising chamber and therefore to consist of persons who had large vested interests in the land. They were expected to be conservative enough to counterbalance the radical freaks of a demos. Hence the qualifications were so contrived as to ensure that the majority of the members would belong to the richest strata of society.

In the province of Bombay (i) persons who paid income-tax on an annual income of not less than Rs 30,000, (ii) persons who were owners of land, the land revenue dues of which were not less than Rs 2,000 per year, (iii) persons who were Sardars or Talukdars or Dumaldars or Inamdars and recognized as such by the Government, were entitled to have a vote. The intellectual element was supplied by the further provisions that (iv) all persons who had been once Presidents or Vice-Presidents of a Municipality, (v) Presidents or Vice-Presidents of a District Local Board, (vi) persons who had been members of the Senate or fellows

of a University, (vii) persons who had been members of any legislative body in India, (viii) persons who enjoyed the title of Mahamahopadhyaya or Shams-ul-Ulema, had also a right to vote. These provisions made it possible for comparatively poor persons to contest the seats of the Council. In the elections of 1925 the total electorate for the Council of State numbered 32,126, of which Burma contributed no less than 15,555. If representatives from Burma were excluded, the remaining thirty-two members of the Council of State were elected by only 17,000 voters spread over the whole of British India. It had thus a predominantly oligarchical character. It was conservative in its formation and its outlook was generally narrow and reactionary. The tenure of the Council of State was five years. The President of the Council of State was nominated by the Governor-General, and until 1932 he was invariably an official. Thereafter, however, a non-official was selected to hold that office.

The Council of State was given full legislative powers. Every Bill must receive its assent. No measure could be incorporated into the law of the land unless the Council of State had given its sanction to it. It could exercise control over the administration by moving resolutions or adjournments or votes of censure, or by putting questions and supplementary questions.

The Council of State was avowedly a body of elders, oligarchical in character and serving as an upper chamber. The second chambers in Western countries have not the thorough control over the nation's purse that the lower chambers possess. Following this sound constitutional precedent, the Indian upper chamber was denied certain privileges in financial matters which were granted to the lower chamber. The Budget was to be presented to both

bodies on the same day. Both of them could discuss it, but the voting of particular grants demanded by the heads of various departments was a special duty and privilege of the Assembly. These were not submitted to the Council of State after they had been voted upon by the Assembly. The latter body was in this respect supreme, subject to the certifying veto of the Governor-General.

After the voting of grants, ways and means of obtaining revenue had to be considered. Money had to be found for the expenditure that was voted, and all proposals for taxation were embodied in a Bill known as the Finance Bill. This Bill had to be passed by the Assembly and was then sent up to the Council of State for its assent like any other legislative Bill. The Council might pass the Bill as it was or introduce amendments, which must be acceptable to the originating chamber. In a deadlock, the Governor-General's extraordinary powers could be exercised for preserving the proper conduct of the administration.

The experience of the working of the Council revealed the usual antagonism and cleavage between the viewpoints of a democratic chamber and those of an oligarchical house. Bills rejected by the Assembly were on several occasions passed by the Council. On crucial occasions of conflict between the democratic Assembly and the bureaucratic Government, the oligarchical Council of State invariably threw itself on the side of the Government. Even in free countries, a congregation of vested interests is always nervous of the progressive democratic impulse, and is opposed to it. In a conquered country like India the instinct of self-preservation was immensely strengthened and naturally induced intense caution on the part of the aristocratic class. Critics of the Council of

State had every reason to deprecate the formation and constitution of a body which was inevitably drawn into an alliance with the bureaucracy as against the declared wishes of the popular chamber.

STATEMENT SHOWING THE COMPOSITION OF THE COUNCIL OF STATE AS IT STOOD WHEN THE SIMON COMMISSION REPORTED[1]

Constituency	Nominated		Elected					
	Officials	Non-officials	Non-Mohammedan	Mohammedan	Sikh	Non-communal	European commerce	Total
Government of India	11[2]	...	...	...	...	...	...	11
Madras ...	1	1	4	1	...	...	...	7
Bombay ...	1	1	3	2	...	...	1	8
Bengal ...	1	1	3	2	...	...	1	8
United Provinces ...	1	1	3	2	...	...	...	7
Punjab ...	1	3	1	2[4]	1	...	...	8
Bihar and Orissa ...	1	...	2[4]	1	...	...	...	4
C. P. and Berar ...	...	2[3]	...	...	...	1	...	3
Assam ...	...	...	...	1	...	...	...	1
Burma ...	...	...	...	...	...	1	1	2
N. W. F. Province ...	...	1	...	...	...	—[5]	—[5]	1
Total ...	17	10	16	11	1	2	3	60

The Legislative Assembly

The lower and more democratic chamber in the Indian legislature was known as the Indian Legislative

[1] Report, Vol. I, p. 167.

[2] Including the President.

[3] One of these was nominated as the result of an election held in Berar.

[4] At alternate general elections there were three non-Mohammedan seats for Bihar and Orissa and only one Mohammedan seat for the Punjab.

[5] The distribution of nominated seats could be varied at the discretion of the Governor-General but the officials could not exceed twenty.

Assembly. This body consisted of a total of 144 members of which 103 were elected and 41 nominated. Of the latter not more than 25 were to be officials. It was thus evident that both in its size and in the larger proportion of elected to nominated members the Assembly was distinguished from the Council of State. The total number of its members was distributed among the various provinces according to their population and importance. The existing political divisions of the territory of India were accepted as the units for its election. Thus the number of elected members representing the province of Bombay in the Assembly was 16 out of its elected total of 103.

There could not be a uniform franchise for the Assembly throughout India. It varied in the different provinces according to local conditions, an attempt being made to establish similar real conditions in all the provinces. In the province of Bombay, (i) all persons who paid income-tax; (ii) all persons who paid an annual land revenue not less than Rs 37-8 in the Upper Sind Frontier, Panch Mahals and Ratnagiri Districts and not less than Rs 75 in the rest of the province, were given the franchise for the Assembly. It will be seen that this franchise was much wider than that for the Council of State and narrower than that for the Bombay Legislative Council as prescribed by the Montford Reforms. The total electorate for the Legislative Assembly numbered 1,415,892 at the time of the elections held in the autumn of 1934. Thus its 105 members were returned by less than fifteen lakhs of voters in British India, the total population of which was then nearly twenty-five crores. The tenure of the Legislative Assembly was three years. The Assembly was given the privilege of electing its own President from amongst its members by the Montford Reforms.

The legislative powers of the Assembly were co-ordinate with the powers of the Council of State. No Bill could be deemed to have been passed into an Act having force of legality unless it had been passed by both bodies and received the Governor-General's assent. All legislation had therefore to pass through the Assembly, which could also move resolutions, votes of censure, and motions of adjournment; any of its members could put questions and supplementary questions in the same manner as the members of the Council of State. It could thus exercise some control over departmental administration and indicate its political predilections. The Assembly had, however, a wider power in the domain of finance than that possessed by the Council of State. For the first time in Indian constitutional history, power was given to the legislature to vote the grants demanded in the Budget. Complete control over the country's finance is one of the essential conditions of parliamentary government. Although it was not introduced in the central administration of India, an endeavour was made to create some shadow of parliamentary government by conceding to the legislature the privilege of voting a small part of the total value of supplies required by the Government of India.

The proposals of the Government for the appropriation of revenues and moneys were divided into two parts, votable and non-votable. Grants coming under the latter head were not put for the Assembly's vote. Some very important subjects were included in this group. Interest and sinking fund charges, salaries and pensions of persons appointed with the approval of His Majesty or the Secretary of State, expenditure under the heads ecclesiastical, external affairs, defence, and tribal areas, were all

non-votable subjects. They covered about eighty-five per cent of the total expenditure.

Proposals for the appropriation of revenues in subjects other than these specified ones were submitted to the vote of the Assembly in the form of demands for grants. The Assembly might assent to or reduce or refuse a grant. Grants that were thus reduced or rejected could not be obtained unless the Governor-General felt that they were absolutely necessary for the discharge of his responsibilities towards Parliament and so restored them by his power of certification. The Joint Parliamentary Committee made it clear that the power of certification was intended to be real, inasmuch as voting of the Budget was not accompanied by any degree of political responsibility and the Governor-General-in-Council continued to be solely responsible to Parliament for peace, order and good government in India.

Besides, the Assembly had power to appoint a Standing Finance Committee to scrutinize proposals for new votable expenditure and to suggest retrenchment and economy in expenditure. At the commencement of each financial year there was also constituted a Committee on Public Accounts to scrutinize the audit and appropriation accounts of the Governor-General-in-Council and satisfy itself that the money voted by the Assembly was spent within the scope of the demand granted by the Assembly.

Relation of the Executive to the Legislature

No Principle of Responsibility. A proper understanding of the relation between the executive and legislative parts of a country's administration is indispensable for estimating the reality of its democratic character. In a country like England with parliamentary institutions, the subordination of the executive to the legislature is complete.

In the beginning of British rule in India legislatures as separate bodies did not exist at all. And when they were introduced and as they were progressively developed during the latter portion of the nineteenth century, gradual additions were made to their powers. But the irresponsible character of the executive administration was always emphasized and maintained. There was no question of the executive being controlled by the legislature. The Act of 1919 introduced many important changes in other directions, but so far as the strictly legal position was concerned, it left unchanged the old relations between the executive and legislative parts of government. Even after the Act of 1935, the same position was maintained as long as the Transitional Provisions and the Ninth Schedule were in operation and the Federation of India was not introduced. In strict theory, the Governor-General-in-Council continued to be as autocratic as he was before. Neither was it necessary for him or his colleagues to resign even if a vote of censure was passed upon them by the legislature. Their salaries and rules of service were beyond the reach of the people's representatives. They were not bound to accept any recommendation made to them by the legislature. Their responsibility was only to the British Parliament and they held office during the pleasure of the Sovereign.

INDIRECT INFLUENCE OF THE LEGISLATURE. This was, however, a purely theoretical position. Matters differed somewhat in practice, particularly after the Act of 1919. With legislatures enlarged and to a certain extent democratized, with an elected non-official majority created in them, with larger financial and deliberative powers conceded to them, the indirect but none the less real influence of popular opinion as expressed in the legislature could not

be entirely insignificant. The legislature could not dismiss executive members but could dismiss requests made by them for various grants necessary to keep some of the smaller wheels of the machinery going. The refusal of such requests and the rejection or reduction of any of the demanded grants did indeed provoke a Viceregal resort to the extraordinary weapon of certification. That power was also invoked for any other similarly rejected legislative measure. But unless certification ceased to be regarded and used as an extraordinary weapon, administration by certification had to be regarded as uncommon and abnormal.

Legally, the Government of India were entirely independent of their legislature. In practice, on the other hand, even before the establishment of the Interim Government in 1946, they had to be thin-skinned enough to be susceptible to popular opinion and to try to abide by its wish, at least to a certain extent. Sir Malcolm Hailey, speaking in the Legislative Assembly after the introduction of the Montford Reforms, described the Government of India as having become, after the Reforms, responsive if not responsible to popular opinion, and its actions as having become indicative, if not reflective, of the popular viewpoint. The degree of the indirect influence of the legislature upon the actions of the executive could not be exactly estimated or evaluated. The Montagu-Chelmsford Report stated that such influence was very real. It may be that on some occasions the popular view as expressed in the legislature was respected and action taken in accordance with it. However, actual experience of administrative working did not justify any strong hope about the practical success of such indirect constitutional restraint. On more than one occasion, the views of the

Assembly were disregarded. Proposals vetoed by it were restored. Grants refused by it were reinstated. Resolutions passed by it were neglected. The precarious and very limited nature of a power which was allowed only on sufferance and the existence of which was made dependent upon the frailty of a generous caprice was amply demonstrated in the actual working of the administrative machine.

COMPOSITION OF THE LEGISLATIVE ASSEMBLY AS IT STOOD WHEN THE SIMON COMMISSION REPORTED [1]

Constituency	Nominated		Elected						
	Officials	Non-officials	Non-Mohammedan	Mohammedan	Sikh	European	Landholders	Indian commerce	Total
Government of India	14	5[2]	...	...	...	...	...	...	19
Madras ...	2	...	10	3	...	1	1	1	18
Bombay ...	2	1	7	4	...	2	1	2	19
Bengal ...	2	2	6	6	...	3	1	1	21
United Provinces ...	1	2	8	6	...	1	1	...	19
Punjab ...	1	2	3	6	2	...	1	...	15
Bihar and Orissa ...	1	1	8	3	...	...	1	...	14
C. P. and Berar ...	1	1[3]	3	1	...	...	1	...	7
Assam ...	1	...	2	1	...	1	...	...	5
Burma ...	1	...	3[4]	...	...	1	...	...	5
Delhi ...	...	...	1[4]	...	...	...	...	...	1
Ajmer-Merwara ...	...	...	1[4]	...	...	...	...	...	1
N. W. F. Province ...	...	1	...	...	...	...	...	...	1
Total ...	26	15	52	30	2	9	7	4	145

[1] Report, Vol. I, p. 168.

[2] Nominated to represent the Associated Chambers of Commerce, Indian Christians, Labour interests, the Anglo-Indian community and the Depressed Classes. The distribution of nominated non-officials might be varied by the Governor-General at his discretion. The official membership of twenty-six was a fixed number though its distribution could be varied by the Governor-General.

[3] Nominated as the result of an election held in Berar which technically was not British territory.

[4] These five seats were filled by non-communal constituencies.

7

A BRIEF OUTLINE OF DYARCHICAL GOVERNMENT, 1921-37

THE GENESIS OF THE SCHEME. The final goal of British policy in India was enunciated in the Announcement of 20 August 1917. It was described as the progressive realization of responsible government and the gradual development of parliamentary institutions. The Act of 1919 was intended to be the first important step in carrying out that promise. Parliament tried to find a way out of two impossible and unacceptable situations. On the one hand, it was pledged not to permit the Indian constitutional structure to remain entirely bureaucratic and uncontrolled by the Indian people as in pre-War days. On the other hand, it was determined not to allow the Indian polity to be suddenly transformed into a full-fledged democracy by one decisive stroke. Any scheme of reform which is based on this hypothesis must be essentially a compromise between the bureaucratic and the democratic principles. The dyarchical plan introduced by the Act of 1919 can be properly understood only when it is related to this fundamental assumption.

That plan proceeded chiefly along the following cardinal points. In the first place, even though the unitary form of the Indian State was maintained, the spheres of the Central and Provincial Governments were clearly demarcated and separated from each other. Secondly, control by the Central Government was considerably relaxed in the provinces, though it was not completely

abandoned. Thirdly, provinces which thus acquired a status of greater administrative independence were made the centre of a new political experiment. The first instalment of self-government which was promised by Parliament was initiated in the provincial domain.

THE PROVINCIAL EXECUTIVE. The system of dyarchy as it operated in the Indian provinces was essentially based on one dominant principle. It deliberately created a division of the Government into two sections. One of them was wholly bureaucratic and the other was popular to a great extent. The former, which was known as Reserved, was managed by an irremovable Executive Council. The latter, which was called Transferred, was given over for management to responsible Ministers. Both these sets of officials were required to work under the same head, namely, the Governor of the province. They were also associated with, and depended for legislation upon, the same legislature. It was discovered by experience that the two divisions created by the dyarchical principle inevitably overlapped at several points. There could be no perfect differentiation between two parts of the same Government. It was found to be an inherent defect of the whole system that administrative work could not be successfully distributed into water-tight compartments.

The Governor was the head of the province and played a dominant part in the working of the Provincial Government. He was invested with many powers, ordinary and extraordinary. He presided over the Executive Council, held counsel with Ministers, and made rules for the transaction of their business. He was empowered, in exceptional cases, to override the Executive Council. Even in the sphere that was supposed to have been transferred to responsible Ministers, the Governor was permitted to

interfere with ministerial decisions, if found necessary. Complaints were made before the Muddiman Committee that such interference often proved excessive in practice.

All laws passed by the provincial legislature required the Governor's assent, and in some cases his previous sanction was required for the very introduction of a Bill. If the legislature did not pass a Bill which was deemed essential by the Governor, he could certify it into an Act in spite of the opposition of the legislature.

The Governor's position was further strengthened by the peculiarities of the dyarchical plan. The constitutional status of the Reserved and Transferred halves was incongruous. Their composition, outlook and methods of work were greatly different, and it was not improbable that they might clash with each other. To the Governor was left the important task of managing matters in such a fashion that conflicts, as far as possible, did not arise at all, and when they arose, were settled in a spirit of friendliness and co-operation.

If the majority party in the legislature refused to accept office and also prevented others from accepting it by refusing to vote their salaries, the Governor was empowered to take over the Transferred subjects in his own charge and to make arrangements for their administration. The Governors of Bengal and the Central Provinces did make use of this emergency power.

Members of the Executive Council were technically appointed by His Majesty, but in practice their choice was made by the Governor. Their tenure of office was fixed at five years and they could not be removed from their posts by an adverse vote of the legislature. One half of the Executive Councillors were Indians and the other half were members of the Civil Service of long

standing. They functioned collectively as a Council, but not as a Cabinet on the portfolio system.

The appointment of Ministers was made by the Governor. But his choice was restricted to persons who were elected members of the provincial Legislative Council. Further, such persons alone could be selected to hold ministerial posts as were able to command a majority of the Council's vote. Where public opinion was effectively organized into well-disciplined parties, the Governor had to leave the formation of a Ministry to the party leaders themselves. Unfortunately, such party formation was rare in Indian politics. Besides, the support of the nominated bloc and of the representatives of vested interests, both of which could be easily controlled by the bureaucratic government, had a considerable influence in determining the composition of a Ministry.

THE WORKING OF DYARCHY. Ministers were not required to work on the principle of joint and collective responsibility. They did not come into office and go out of office together, and did not constitute an indivisible, homogeneous whole like the British Cabinet. They were not therefore fortified by the strength of a closely organized unit. The Governor dealt with a Minister as an individual head of a department.

Though the provincial sphere was purposely split into two halves, the provincial finances were left entirely undivided. They were looked after by a Finance Member whose authority extended to the whole administration. The budget for the two halves was common. All taxation was provincial and its proceeds were credited to the provincial exchequer. Out of that common reservoir, different sums were provided for expenditure on the various activities of the Provincial Government, whether in the Reserved

or in the Transferred parts. Executive Councillors and Ministers had therefore to meet every year for preparing the provincial budget. The outlook of an irresponsible bureaucracy was fundamentally incompatible with the needs and ambitions of popular Ministers. A spirit of give-and-take, of mutual accommodation, was absolutely essential to the smooth functioning of such a delicate mechanism. If the differences became acute, and the result was a deadlock, the Governor could allocate funds between the two halves in his own discretion.

Dyarchy was never intended to be an ideal in itself, but a stepping-stone to a fully self-governing India. It was therefore recommended that members of the Executive Council and Ministers should work together in the closest intimacy and mutual co-operation. The Governor could take the initiative in establishing traditions of collective working. In practice, if not in law, the line of distinction between Reserved and Transferred subjects could be obliterated. However, such an idea proved to be too altruistic to be capable of realization. On the whole, the Governors were not prepared to accept all the implications of Mr Montagu's concept of dyarchy. In fact, experience showed that the Governor inevitably became the chief pivot and the centre of the provincial administration. Ministers complained of the undue interference of the Governor in the working of their departments. In short, all government power tended to be concentrated in his hands.

Indians were thoroughly dissatisfied with the whole project of dyarchy. The parliamentary appearances that it suggested were tantalizing. But those who had a personal knowledge of its inner working exposed its inherent contradictions and defects. The ideal manifes-

tation of dyarchical government implied the complete self-effacement of an irresponsible bureaucracy. Unfortunately, that quality was too super-human to be a normal feature of the administration.

THE PROVINCIAL LEGISLATURES. The Act of 1919 introduced several important changes in the constitution of the provincial legislatures. In the first place, they ceased to be looked upon as mere enlargements of the Executive Councils. Their status as independent organs of government was distinctly recognized. Secondly, a large majority of elected non-official members was provided in their structure. Thirdly, the franchise for election to the provincial Legislative Councils was considerably lowered.

The powers of these legislatures were also increased. In addition to law-making, they were given greater control over the administration by means of the rights of interpellation, adjournments, resolutions, etc. A part of the provincial budget was made subject to their vote. Lastly, they were privileged to exercise supreme authority over that portion of the provincial executive which was represented by the Transferred half. Ministers were entirely the servants of the legislature. Even the Executive Council could be indirectly influenced by the criticism of the Legislative Council.

TOTAL STRENGTH OF GOVERNOR'S LEGISLATIVE COUNCILS AS GIVEN BY THE SIMON COMMISSION

Province	Statutory minimum	Elected	Nominated officials plus Executive Councillors	Nominated non-officials	Actual Total
Madras ...	118	98	7+4	23	132
Bombay ...	111	86	15+4	9	114
Bengal ...	125	114	12+4	10	140
United Provinces	118	100	15+2	6	123
Punjab ...	83	71	13+2	8	94
Bihar and Orissa	98	76	13+2	12	103
Central Provinces	70	55	8+2	8	73
Assam ...	53	39	5+2	7	53
Burma ...	92	80	14+2	7	103

8

THE FEDERATION OF INDIA AS PROPOSED IN THE ACT OF 1935

One of the basic concepts of the Act of 1935 was the establishment of an Indian Federation, incorporating British India and the Indian States. Part II of the Act was devoted to prescribing the details of the federal structure. But this Part was not intended to be given effect simultaneously with the introduction of provincial autonomy on 1 April 1937. There were many difficulties in doing so. Lengthy negotiations and discussions were necessary before the requisite number of Princes could be persuaded to accede to the Federation. Besides, the scheme had evoked a very hostile reception in British India, and it could not have been enforced without creating a considerable amount of resentment and bitterness. Meanwhile, England was involved, from September 1939, in a war with Germany, and during the continuance of the emergency, highly controversial issues were naturally shelved. In the middle of October 1939 the Viceroy announced that the federal scheme was suspended indefinitely. It never therefore functioned, and the brief outline given here is of purely academic interest.

A. Establishment of the Federation and the Distribution of Subjects

The British Indian Provinces. There was no difficulty about the incorporation of British India in the Federation. Constitutionally speaking, the British Parlia-

ment was considered competent to prescribe, by an Act, the political status and the administrative machinery of the British Indian provinces. But their old status of dependence on and subordination to the Central Government had now to cease. They could no longer be looked upon as mere agents of a political superior from whom their powers were derived. All powers hitherto enjoyed by the Secretary of State, by the Governor-General and by any Governor or Local Government were therefore supposed to have been resumed by the Crown. The Central and Provincial Governments were thus reduced, in their relation to each other, to a position of equality in negation. The powers so resumed were taken to have been redistributed by the Crown between the Federal or Central Government on the one hand and the provinces on the other. Both these entities now derived their authority from the same source. The provinces therefore obtained a co-ordinate, and not a subordinate, status in their relation to the Federal Government.

THE INDIAN STATES. The position of the Indian States was quite different. They were not subject to legislation by the British Parliament, and were assured of their internal sovereignty by the treaties, sanads and usages which governed their relations with the Crown. The Crown did, of course, enjoy rights of paramountcy over them. But it could not resume in respect of the States those powers which it could resume in the case of British India. The States could not be compelled to join the Indian Federation by Parliamentary enactment. They must join it of their own accord and of their own free-will. The Act of 1935 did not actually inaugurate the Federation of India. It laid down the method and procedure by which the accession of the States might be effected

if and when their Rulers thought it fit to accede.

INSTRUMENT OF ACCESSION. A ruler who decided to enter the Federation had to execute what was called an Instrument of Accession which was acceptable to His Majesty, and which would be binding upon the Ruler, his heirs and successors. He would declare through this Instrument that he had acceded to the Federation and that, subject to the terms of the document, the federal authority should function in his State to the extent to which he had accepted the Federation.

The following two conditions had to be satisfied before the Federation could come into existence: (i) States, the Rulers of which were entitled to choose not less than 52 members of the Council of State, and (ii) States, the aggregate population of which amounted to at least one half of the total population of all the States put together, had decided to accede to the Federation. Thus the new Constitution could not become an active reality unless a substantial portion of the States' area and people were brought within its orbit. It was found by experience that the task of securing the accession of the Princes was full of difficulty.

After the Accession of the requisite number of States had been signed, it would be lawful for His Majesty to declare by Proclamation that from an appointed day the Federation of India under the Crown had been inaugurated. But before the issue of such a Proclamation an address in that behalf had to be presented to His Majesty by each House of Parliament. The authority of the British people was thus again emphasized.

THREE LISTS OF SUBJECTS. By the Act of 1935 an exhaustive and specific list of subjects was drawn up for the Central Government and another was similarly drawn

up for the provinces. A third large list was further prepared for the concurrent jurisdiction of those two authorities. This was expected to be a useful device for securing uniformity in certain matters without introducing centralization. As regards residuary powers, Hindus generally favoured leaving them to the Centre while Muslims preferred the opposite course as being more desirable in the interests of minorities. The Act finally laid down that the Governor-General might empower either the federal or the provincial legislature to enact a law with reference to any matter not enumerated in the Central, Provincial and Concurrent Lists. The Federal Legislative List contained in all 59 subjects which were more or less of all-India importance; the Provincial List contained 54 items and the Concurrent List 36 items.

B. The Federal Executive

THE CROWN AND ITS PARAMOUNTCY. The sovereignty of the British King was supposed to extend to the whole of the British Empire, and he automatically became the legal head of every system of government and administration that might be created for the different component parts of that empire. The King was to become the highest legal dignitary in the Federation of India even as he was in the unitary Government of the country. Certain powers were specifically vested in him. For example, the appointment of the Governor-General, the Governors and the Commander-in-Chief was to be made by His Majesty; many orders-in-council pertaining to various subjects had to be issued by him; he could disallow laws passed by either the federal or provincial legislatures; Instruments of Accession executed by Rulers of States had to be approved of and accepted by him;

it was in his power to issue a Proclamation establishing the Federation of India. Among the prerogative powers of the King may be mentioned the control of foreign policy; right to grant honours; right to grant pardon, and so on. The Crown was always considered to have the rights of Paramountcy over the Indian States. The relations between the States and the Crown were not on a purely contractual basis. The authority of the suzerain was continually clarified and enlarged by the Crown's exclusive right of interpreting the old treaties in the light of modern conditions, and by the custom, practice and usage of the Political Department of the Government of India. Even the Butler Committee could not define the scope of paramountcy in a particular formula. 'The relation between the Paramount Power and the States,' they said, 'is not fixed, rigid or static, but adaptable, mobile or dynamic in character. Paramountcy must remain paramount.'

It must be clearly understood that all these powers were not expected to be directly exercised by the Crown in his own free will or discretion. In the British constitutional philosophy and practice they are actually exercised on his behalf by Ministers who are, in the last resort, responsible to the people. In the case of India, the powers assigned to or enjoyed by His Majesty were not to be exercised by popular Indian Ministers but by the Secretary of State for India and the British Cabinet, who were the servants of the British public.

INTRODUCTION OF DYARCHY. The Act of 1935 was not intended to satisfy India's demand for an immediate introduction of full-fledged responsible government in the federal centre and in the provinces. Parliament was not prepared to accept the claim for such a wholesale and

radical alteration of the Indian Constitution. The changes proposed in the new Act were inspired by a restricted ideal and toned down by numerous limitations. The principle of responsibility was to be introduced in the Federal Government to a small extent, but otherwise its bureaucratic character was to be maintained. To put it briefly, a dyarchical system was to be established in the federal sphere.

At the head of the Federal Government was to be the Governor-General of India and Crown's Representative (or Viceroy). Subjects in the Federal Legislative List were to be divided into two groups. One, which may for convenience be called Reserved, was to comprise defence, ecclesiastical affairs, external affairs except the relations between the Federation and any of the Dominions in the British Empire, and tribal areas. The other, which may similarly be designated as Transferred, was to include all the remaining federal items.

The Reserved departments were to be administered by the Governor-General with the advice of a new type of officials called Counsellors. They were not to form a council like the Executive Council, and were not to be responsible to the federal legislature but only to the Governor-General. The Transferred departments were to be administered by him with the aid and advice of a Council of Ministers who were to be members of the federal legislature and responsible to it. The Budget was to be common to both the parts of government, and the same legislature was to make laws for both.

THE GOVERNOR-GENERAL. The Governor-General of India was to be appointed by His Majesty on the advice of the Prime Minister of Britain, and was expected to possess the same qualifications that were possessed by him in the past. Normally, he would also be the Viceroy or

Crown's Representative and enjoy immense authority and prestige. The importance of the office and of the personality which held it could not diminish even after the inauguration of the Federation. The Governor-General was to have many powers, ordinary and extraordinary, in the executive, legislative and financial domains of government. A new feature of the Act was that three different ways for the exercise of those powers were defined. These ways applied to all departments of Government whether Reserved or Transferred and covered the whole sphere of the civil and military activity of the State.

(i) In some cases, the Governor-General had to act in his discretion; in doing so he need not consult his Ministers at all (though he was not definitely prevented from consulting them), and might take decisions on his own responsibility. No less than 94 different sections of the Act made a mention of this power and directed the Governor-General to exercise it. They referred to practically every important governmental activity.

(ii) In some cases the Governor-General was asked to exercise his individual judgement; in doing so he was expected to take the advice of his Ministers, but need not necessarily accept it and act accordingly. This power was mentioned in 32 different sections of the Act and they also concerned many important subjects, including items like the Special Responsibilities.

(iii) In the cases that remained the Governor-General had to act on the advice of his Ministers, and therefore their advice must be sought and accepted. The field for action that was left after the above deductions were made was extremely limited.

It was laid down that when the Governor-General was required to act in his discretion or in the exercise of his

individual judgement, he should be under the general control of the Secretary of State and should comply with such particular directions as might from time to time be given to him.

The Governor-General could appoint Counsellors, not exceeding three in number, to assist him in the administration of the Reserved subjects of the Federation. His relations with them were not defined in the Act, and the method of their working was obviously to be determined by conventions and practice. But it was clear that they were to have no kind of veto over any of the actions of the Governor-General. The Governor-General was also given the power to appoint a Financial Adviser who was to hold office during his pleasure, and whose salary and other conditions of service were to be determined by him.

Technically speaking, it was the Governor-General who was to choose and summon the Federal Ministers. But as they would enjoy the confidence of the legislature, his power in this respect was, in practice, bound to be severely limited. He had however the right to preside over their meetings in his discretion, and to make rules of business for them.

The Governor-General was given considerable powers over the legislature. He could summon, prorogue, and dissolve the Federal Assembly. He could make rules of procedure for regulating the business before either house. His previous sanction would be required before introducing many important kinds of Bills, and his assent would be required for all Bills passed by the legislature before they could become Acts.

In addition to these powers, the Governor-General could issue ordinances, either on the advice of his Ministers or in his discretion. He could also pass what were to be

known as the Governor-General's Acts entirely on his own authority and without any reference to the legislative bodies if he thought it necessary to do so. This was of course an exceptional and a very comprehensive power, and took the place of the method of certification.

The provincial Governors and governments would be under the control of the Governor-General in several respects. When the Governor was required to act in his discretion or to exercise his own judgement, he would be under the general control of the Governor-General and would have to comply with such particular directions as might be given by him from time to time. A large field was covered by this provision. There were about 43 sections of the Act in which the Governor-General's superior powers in respect of certain provincial matters were specifically mentioned. Besides, the Governor-General, acting in his discretion, could issue orders to a Governor as to how the executive authority in the province should be exercised for preventing any grave menace to the peace and tranquillity of India.

Over and above all these powers, the Governor-General was invested with what were described as Special Responsibilities. This legislative innovation was a unique product of the Act of 1935. They were: (*a*) prevention of any grave menace to the peace and tranquillity of India or any part thereof; (*b*) safeguarding of the financial stability and credit of the Federation; (*c*), (*d*) safeguarding of the legitimate interests of the minorities and the rights and interests of the Services; (*e*) preventing discrimination against the United Kingdom as mentioned in sections 111 to 121 of the Act; (*f*) preventing goods of United Kingdom or Burmese origin from being subjected to discrimination or penal treatment; (*g*) protection of the

rights of any Indian State or its Ruler; (*h*) securing the due discharge of those functions which would have to be exercised in his discretion or in his individual judgement. These Special Responsibilities had to be fulfilled by the Governor-General exercising his individual judgement whenever he thought any action in that regard was necessary.

It must also be clearly understood that the formulation and definition of Special Responsibilities was not merely equivalent to reserving a certain number of departments for the Governor-General's or Governor's exclusive jurisdiction, as was done in dyarchy. The division introduced by them was not departmental and physical, but should rather be described as psychological. They were intended to cover the whole domain of administration, whether ministerial or bureaucratic, federal or provincial.

If for any reason the constitutional machinery provided by the Act failed to work and any of the wheels of government threatened to become immobile, the Governor-General was given special power to combat the situation. Section 45 prescribed that if the Governor-General was satisfied that a situation had arisen in which the government of the Federation could not be carried on in accordance with the provisions of the Act, he might issue a Proclamation, and thereby (*a*) declare that his functions shall, to such extent as may be specified in the Proclamation, be exercised by him in his discretion, (*b*) assume to himself all or any of the powers vested in or exercisable by any federal body or authority. Such a Proclamation had to be communicated forthwith to the Secretary of State and laid by him before each House of Parliament. It was to cease to operate at the expiration of six months, unless Parliament by resolutions

approved its continuance for further periods; but in no case was it to continue for more than three years. Thus all the powers of the Federation could be taken over by the Governor-General in a grave emergency.

THE COUNSELLORS AND FINANCIAL ADVISER. For the administration of the Reserved part of the Federal Government, the Act provided for the appointment of a separate set of officials. They were to be known as Counsellors. They were to be appointed by the Governor-General and their number was not to exceed three. The tenure of their office was not fixed by law nor were their qualifications defined by it. Functions in respect of the Reserved departments were to be exercised by the Governor-General in his discretion; but he must have the assistance of men of experience, talent and representative character in the performance of the task. It was therefore not unlikely that most of the Counsellors would be members of the I.C.S. of long standing and service. The Counsellors' opinions were not to be binding upon the Governor-General and they were not intended to exercise any constitutional restraint over him.

FINANCIAL ADVISER. In addition to these Counsellors, the Governor-General was empowered to appoint a Financial Adviser. It was to be his duty to assist the Governor-General in the discharge of his Special Responsibility for safeguarding the financial stability and credit of the Federal Government, and also to give advice to the Federal Government upon financial matters if he was consulted. The Financial Adviser must not be confounded with the Finance Minister, who was to be in charge of the Finance Department, and as a member of the federal ministry was to be responsible to the legislature for his actions.

THE COUNCIL OF MINISTERS. For the administration of

the subjects which were not Reserved, it was provided that there should be a Council of Ministers. They were to aid and advise the Governor-General in the exercise of his functions except when he was required to act in his discretion. But the scope for ministerial authority would not have been large because the discretionary powers of the Governor-General were very wide and included the management of such important subjects as defence and external affairs, and the numerous reservations, safeguards and exceptional powers with which the Governor-General was invested under the Act.

The Ministers were to be chosen and summoned by the Governor-General, but as they were to be responsible to the federal legislature he would not have an unfettered choice. He must accept those who had a clear majority of votes in the legislative chambers. They would have to be members of one or the other house of the legislature and have the solid support of the majority of their votes. Ministers would in fact be prominent members of the party in power and many of them would be among the foremost political leaders of the country. Their salaries would be fixed by an Act of the legislature, though the amounts paid to individual Ministers would not be annually voted at the time of the Budget.

The Ministers were to be sworn in as a council and the Governor-General might preside over it in his discretion. There was no mention of the office of Prime Minister in the Act, but the Instrument of Instructions to the Governor-General said that the latter, in the selection of his Ministers, should consult the person who in his judgement was most likely to command a stable majority in the legislature. This implied that there would be a leader of the Ministry who would function as the Prime Minister.

The number of Ministers was not to be more than ten. No such limit was put down in the case of the provincial Ministers. Allocation of portfolios would be technically the duty of the Governor-General though in practice it would devolve upon the Prime Minister. However, the rules of business would include provisions requiring Ministers and Secretaries to Government to transmit to the Governor-General all the information about matters specified in the rules, and bring to his notice any matter which involved or was likely to involve any of his Special Responsibilities.

THE WORKING OF DYARCHY. The experiment of dyarchy was tried in the provinces for sixteen years after the introduction of the Montford Reforms and was proved to be incapable of yielding really satisfactory results. It was therefore given up in favour of provincial autonomy. The same system was however proposed for the federal centre. The Joint Parliamentary Committee were clearly of the opinion that so long as some political powers were to be withheld from India, such division in the functions of Government would be inevitable. But they urged that, given the desire and the will, even a divided Government of this type could work smoothly and give excellent results. It was recommended that the Reserved and Transferred halves should not look upon themselves as strangers to each other or even as rivals of each other. The working of the Government should be based on the concept that they are partners in a common cause and ought to take each other into confidence.

The Governor-General was specially instructed in his Instrument of Instructions to inculcate the spirit and tradition of collective responsibility among his Ministers, and also to encourage the practice of joint consultation between himself, his Counsellors and Ministers.

However, the equipoise set up by dyarchy was extremely delicate. The compromise between incompatibles that it contemplated and embodied was so precarious that the unintended shock of a straightforward and simple action could suddenly throw the whole mechanism out of gear. Apart from the fact that India could not be reconciled to the ideal of a truncated and heavily safeguarded self-government, the scheme of dyarchy could not but evoke a feeling of scepticism on account of its inherent defects and conflicting loyalties.

C. The Federal Legislature

THE CHAMBERS. The Act prescribed the constitution, powers and procedure of the federal legislature in India. The upper chamber was to be known as before as the Council of State; the lower chamber was to be known as the House of Assembly. The table below shows their composition.

COMPOSITION OF THE FEDERAL LEGISLATURE

Name	British Indian Representatives			Representatives of Indian States nominated by their Rulers	Total
	Elected	Chosen by the Governor-General	Total	Not more than	Not more than
Council of State...	150	6	156	104	260
House of Assembly	250	...	250	125	375

The seats in the Council of State assigned to a province were to be distributed among territorial constituencies which were to be general and communal, the latter for

Mussalmans and Sikhs. Seats were reserved for women, and the scheduled castes. A high property qualification was required for the right to vote at elections to the Council of State.

Members of the House of Assembly assigned to a province were not to be elected directly by constituencies, territorial and communal, specially formed for that purpose in the provincial area. The Legislative Assembly of the province was to be the body of electors. Its Muslim and Sikh members were to elect the Muslim and Sikh representatives; those holding general seats in it were to vote in the election to the general seats of the Federal Assembly. Women members were to be elected by an electoral college of all women who were members of the Legislative Assembly of any province. Anglo-Indian, European and Indian Christian seats were to be filled by persons who were elected by electoral colleges consisting of members of those communities who were in the provincial Legislative Assemblies.

Both the federal legislatures were to have elected presidents, the Assembly president being known as the Speaker. The Federal Assembly was to have a tenure of five years, but might be dissolved earlier. The Council of State was to be a permanent body not subject to dissolution. One-third of the total number of its members were to retire every three years, and the term of an individual member was to be nine years. The two chambers were to have legislative, administrative and financial powers and were to be co-ordinate in almost all respects. The voting of grants of expenditure in the votable portion of the Budget was not to be an exclusive privilege of the lower house as before, but was to be extended to the Council of State. Joint sittings of the chambers were to be held whenever

there was a difference of opinion between them on a legislative or financial issue.

The following tables give the allocation of seats in the Council of State and the House of Assembly.

COUNCIL OF STATE: REPRESENTATIVES OF BRITISH INDIA

Province or community	Total seats	General seats	Seats for scheduled castes	Sikh seats	Mohammedan seats	Women's seats
Madras	20	14	1	...	4	1
Bombay	16	10	1	...	4	1
Bengal	20	8	1	...	10	1
United Provinces	20	11	1	...	7	1
Punjab	16	3	...	4	8	1
Bihar	16	10	1	...	4	1
Central Provinces and Berar ...	8	6	1	...	1	...
Assam	5	3	...	...	2	...
North-West Frontier Province ...	5	1	...	...	4	...
Orissa	5	4	...	...	1	...
Sind	5	2	...	...	3	...
British Baluchistan	1	...	...	...	1	...
Delhi	1	1	...	...	...	...
Ajmer-Merwara	1	1	...	...	...	...
Coorg	1	1	...	...	...	...
Chosen by the Governor-General in his discretion	6	...	...	...	...	...
Anglo-Indians	1	...	...	...	...	...
Europeans	7	...	...	...	...	...
Indian Christians	2	...	...	...	...	...
Total ...	156	75	6	4	49	6

THE FEDERAL ASSEMBLY: REPRESENTATIVES OF BRITISH INDIA

Province	Total seats	Total of general seats	General seats reserved for scheduled castes	Sikh seats	Mohammedan seats	Anglo-Indian seats	European seats	Indian Christian seats	Seats for commerce and industry	Seats for landholders	Seats for labour	Women's seats
Madras	37	19	4	...	8	1	1	2	2	1	1	2
Bombay	30	13	2	...	6	1	1	1	3	1	2	2
Bengal	37	10	3	...	17	1	1	1	3	1	2	1
United Provinces	37	19	3	...	12	1	1	1	...	1	1	1
Punjab	30	6	1	6	14	...	1	1	...	1	...	1
Bihar	30	16	2	...	9	...	4	1	...	1	1	1
Central Provinces and Berar ...	15	9	2	...	3	...	...	...	...	1	1	1
Assam	10	4	1	...	3	...	1	1	...	...	1	...
North-West Frontier Province ...	5	1	...	...	4	...	...	...	...	...	...	...
Orissa	5	4	1	...	1	...	...	...	...	...	...	...
Sind	5	1	...	...	3	...	1	...	...	...	...	...
British Baluchistan	1	...	...	...	1	...	...	...	...	...	...	...
Delhi	2	1	...	...	1	...	...	...	...	...	...	...
Ajmer-Merwara	1	1	...	...	...	...	...	...	...	...	...	...
Coorg	1	1	...	...	...	...	...	...	...	...	...	...
Non-Provincial seats	4	...	...	...	...	...	...	...	3	...	1	...
Total ...	250	105	19	6	82	4	8	8	11	7	10	9

STATEMENT SHOWING THE NUMBER OF SEATS ASSIGNED TO SOME OF THE BIGGER STATES IN THE FEDERAL LEGISLATURE

Name of State	No. of seats in the Federal Council of State	No. of seats in the Federal Legislative Assembly
Hyderabad	5	16
Mysore	3	7
Kashmir	3	4
Gwalior	3	4
Baroda	3	3
Travancore	2	5
Cochin	2	1
Udaipur	2	2
Jaipur	2	3
Jodhpur	2	2
Bikaner	2	1
Alwar	1	1
Indore	2	2
Bhopal	2	1
Cutch	1	1
Nawanagar	1	1
Bhavnagar	1	1
Junagadh	1	1
Kolhapur	2	1

EFFECT OF THE CHANGES. It is necessary to explain the probable effects of the changes that were made in the Constitution and powers of the Central Legislature. The old nominated and official bloc would have vanished almost completely, except for six seats in the Council of State. This would have meant the supercession of that bureaucratic control of voting which offended against the fundamentals of democratic polity. However, much of the good resulting from the withdrawal of the nominated and official bloc would have been undone by the inevitable introduction of a new element. The delegates from Indian States were to form a substantial portion of both houses. The law did not prescribe, though it did not prohibit, the election of any of them by the subjects of States. They were to be nominated by their rulers. Thus, a majority of the Indian State representatives would not have been elected by the people of the States. They would have been nominees of absolute masters and instruments of their will. And in the delicate environment of paramountcy, the autocratic masters themselves would have proved unduly susceptible to the influence of the Department of the Crown's representative.

However, on the assumption that the future constitution of the country should be an all-India federation including the Indian States, the incongruity caused by the presence of a large non-elected element in what was intended to be a representative chamber had to be faced; otherwise the rulers of States would not have acceded to the federation. There was comfort in the thought that such a stage, though inevitable, was likely to be temporary and transitional.

The Council of State was bound to be an assemblage of vested interests, reactionary oligarchs and conservative politicians. The franchise for its election was to be

exceptionally high; 40 per cent of its membership would be constituted by State nominees. Besides it was to be a permanent body and therefore was not to be subject to that wholesome cleansing which is periodically brought about by a dissolution and general election. The abnormally long term of nine years for its members was likely to breed irresponsibility and defiance in the legislators.

Upon this narrow-based upper chamber the Act of 1935 conferred a power which in a democratic polity is an exclusive privilege of the lower chamber. The voting of grants of expenditure was denied to the Council of State by the Act of 1919. But the federal counterpart of that chamber was to be possessed of that privilege. In short, everything seems to have been conspired to make the upper chamber a strong instrument for checking the advance of democracy.

The federal Budget was to be divided into votable and non-votable items as before, and over 70 per cent of the total expenditure was to be beyond the control of the Legislature. In this respect, there was no change for the better. The absence of financial power would have imparted an air of unreality to responsible government and would have tended to reduce it to a mockery.

The framers of the Act of 1935 pointed out that federation is the only means of combining unity and national self-government with local diversity and autonomy in so vast a country as India. It was of the utmost importance that the whole country should have not only a cultural but a constitutional unity. Its organically integrated character had to be maintained, particularly after the creation of self-governing provincial divisions. Otherwise separatist influences would become dominant and the result would be the creation of smaller sovereignties which might

be constantly at war with each other politically and economically, and reduce the country to chaos. The Indian critic did not deny the truth of these contentions. In fact, it was too obvious to be disputed. But the acceptance of the theoretical plea for the constitutional unity of India was not equivalent to agreeing that the particular federal structure outlined in the Act was not vitiated and deformed in such a way that what was intended to be a remedy would actually be worse than the disease.

D. The Federal Court

The Act of 1935 provided for the creation of the Federal Court of India and it was constituted on 1 October 1937. It was to consist of a Chief Justice and not more than six puisne judges. They were to be appointed by His Majesty and could hold office until they attained the age of sixty-five. A person was not qualified to be a judge of the Federal Court unless he (i) had been for at least five years a High Court judge in British India or in a federated State, or (ii) had qualified as a barrister or advocate in Britain and was of at least ten years' standing, or (iii) had been for at least ten years a pleader of a High Court in British India or in a federated State. The salaries and allowances of the judges were to be prescribed by His Majesty-in-Council and were to be charged upon the revenues of the Federation. They were fixed at Rs 7,000 per month for the Chief Justice and Rs 5,500 per month for the other judges.

The Federal Court was to have exclusive jurisdiction in any dispute between any two or more of the following parties, viz. the Federation, any of the provinces, or any of the federated States, in so far as the dispute involved any question about legal rights. An appeal would lie to

the Federal Court from the judgment of a High Court in British India if the latter certified that the case involved a substantial question of law as to the interpretation of the Act of 1935 or any Order-in-Council made thereunder.

The Federal Legislature might provide by law that in certain civil cases where the amount involved in the dispute was not less than Rs 50,000, an appeal would lie to the Federal Court from the judgment of a High Court in British India. Direct appeals to the Privy Council in such cases would be abolished. An appeal might be made to the Privy Council against any judgment of the Federal Court given in the exercise of its original jurisdiction; and in any other case by leave of the Federal Court or of the Privy Council. The Federal Court's primary duty would be to interpret the constitution, not with the cold eyes of the anatomist, but as a living and breathing organism.

E. Federal Finance

CENTRALIZATION BEFORE 1870. After the passing of the Regulating Act in 1774, British India was a unitary state. Till the introduction of provincial autonomy in 1937 all civil and military authority over the British Indian territories was vested, legally speaking, in the Governor-General-in-Council. Complete control over the revenues and expenditure of the whole area comprised in British India was part of this general supremacy defined for the Government of India by successive Acts of Parliament.

Under such a centralized arrangement, the provinces had no independent financial existence. All sources of income belonged to the Government of India; all revenues collected in any part of the country were credited to their treasury. They allotted in their discretion moneys for provincial expenditure and decided the purposes for

which the amounts should be utilized.

Such a wholesale centralization in a vast country like India imposed a heavy burden of financial administration upon the Central Government. It caused an enormous strain and embarrassment to the Government of India, and genuine grievances and discontent among the provincial units. Relief was urgently needed by the one; responsibility was keenly desired by the other. Both could be simultaneously achieved by a policy of decentralization even though the unitary character of the state was maintained.

DECENTRALIZATION, 1870-1919. Lord Mayo took the first step in initiating a scheme of decentralized administration and finance in 1870. He delegated certain departments to the provinces for management. Police, jails, education, medical relief, hospitals, sanitation, roads and communications and a few other departments were put in this category. These were all spending departments, but whatever receipts were obtained from them were allowed to be taken by the provinces, and in addition, a fixed grant of money, or ‘dole’, was made to each province to make up the deficit in its expenditure. This policy of delegation was further extended by Lord Lytton and Lord Ripon. The number of departments assigned to the control of the provinces was increased, and a corresponding addition was made to their resources. The lump contribution, or ‘dole’, made to each province was abolished and, instead, they were given a share in the revenues of certain departments. These were called the divided heads, and included subjects like income-tax, land revenue, excise, registration and irrigation.

Contracts were made on this basis with each province, and they were revised and renewed at the end of every five years. Lord Curzon's Government declared that the

contracts made in 1904 would be considered to be quasi-permanent. Lord Hardinge went a step further, and declared that the contracts made in the year 1912 would be taken to be permanent.

Thus, on the eve of the Montford Reforms, there were three different groups of administrative departments. One consisted of subjects of all-India importance like defence, customs, railways, coinage and posts and telegraphs, and was controlled exclusively by the Government of India. The second group contained what were known as the Provincial heads and was given for management to the provinces under certain conditions. The last group was formed by what were called the Divided heads. Revenue from them and administrative control over them were shared in a certain proportion between the Central and Provincial Governments.

It must be emphasized that the process of decentralization initiated by Lord Mayo and developed thereafter by his successors was purely a matter of internal arrangement between the Government of India and the Provincial Governments. The scheme did not owe its origin to the ideals of federalism; it was inspired and permitted only by considerations of administrative convenience and efficiency. The ultimate superiority of the Central Government remained unaffected and unquestioned.

AFTER THE MONTAGU-CHELMSFORD REFORMS. The Act of 1919, even though it did not visualize the formation of a federated India, permitted the framing of devolution rules which would secure to the provinces a definite sphere for their own free judgement and action. Under these rules, two lists of subjects were made, one exclusively for the Central Government and the other for the provinces. The Divided heads of previous years were abolished.

Income-tax was added to the Central list, and land revenue, excise and registration were added to the Provincial list. As this division was expected to produce a deficit in the Budget of the Central Government, the provinces were called upon to make contributions under what is known as the Meston Award for the purpose of wiping out the deficit. But these contributions were very unpopular and were abolished within a few years.

The power of borrowing money by issuing loans was now conceded to the provinces with certain restrictions. A few sources of taxation were also allocated to them.

The great defect of this distribution of departments was that it allotted to the Centre all the elastic and expanding sources of income and left to the provinces items of taxation which were both inelastic and unpopular. The exchequer of industrially and commercially advanced provinces could not benefit by the growth of their income because income-tax and customs were Central subjects. On the other hand, the Indian public had long been demanding a reduction in land revenue, and the adoption of a policy of total prohibition which would result in an extinction of the excise revenue. And these very sources of income were made available to popular Ministers for carrying out their programmes of nation-building activity.

But it must be said to the credit of the Montford plan that it constituted a definite advance, in practice if not in law, towards a federal system. It endowed the provinces with a distinct, if not inviolable, personality and gave them considerable independence in financial matters. Though the separation of revenues then effected was, in legal form, merely an act of statutory devolution which could be varied by the Government of India and Parliament at any time, nevertheless, from the practical financial point of view, a

federal system of finance can be said to have come into existence after the Montford Reforms. It was further modified and legally incorporated as an integral part of the constitutional structure created by the Act of 1935.

FEDERAL FINANCE UNDER THE ACT OF 1935. The scheme of the allocation of revenues between the Federation of India and its constituent units as contemplated by the Act of 1935 was based on the following principles: Revenues derived from items enumerated in the Federal Legislative List were allocated to the Federation. Revenues derived from items enumerated in the Provincial Legislative List were allocated to the provinces. There were several items in the Concurrent Legislative List which were capable of yielding income by being taxed, but their position was not properly clarified in the Act.

The following were among the main sources of revenue found in the Federal Legislative List: customs duties; excise duties on goods manufactured or produced in India; corporation tax; salt; taxes on income other than agricultural income; taxes on capital; duties in respect of succession to property other than agricultural land; terminal taxes on goods or passengers carried by railway or air; taxes on railway freights and fares.

Out of this list, duties and taxes on the following items were to be levied and collected by the Federation, but their net proceeds in any financial year would be assigned to the provinces and federated States: succession to property other than agricultural land; federal stamp duties; terminal taxes on goods and passengers carried by railway or air; and taxes on railway fares and freights. Duties on salt, federal duties of excise, and export duties were to be levied and collected by the Federation, but if an Act of the federal legislature so provided, a part or the whole of the proceeds

would be paid out of the revenues of the Federation to the provinces and federated States. At least 50 per cent of the proceeds of the export duty on jute would be assigned to the provinces or federated States in which jute was grown.

A prescribed percentage, which was fixed at 50, of the net proceeds of the taxes on income other than agricultural income was to be assigned to the provinces and the federated States. But the federal legislature might at any time increase the taxes by a surcharge for federal purposes. Special subventions were given out of the revenues of the Federation to make up the deficit in the budgets of certain provinces. The Federation had to pay out of its revenues sums required by the Crown's Representative for the discharge of his functions in relation to the Indian States.

The sources of income possessed by the Provincial Governments in the federal constitution are described at length in a later chapter.

The federal Budget was to be laid every year before the chambers of the federal legislature, and was to show separately estimates of expenditure which were votable by those chambers and those which were non-votable. The latter were described as being charged upon the revenues of the Federation and were beyond the control of the elected representatives of the people. The following were some of the non-votable items: Salaries and allowances of the Governor-General, Ministers, Counsellors, Financial Adviser, judges of the Federal Court and the High Courts; debt charges including interest, sinking fund and redemption; expenditure on defence, ecclesiastical affairs, external affairs. The salary and allowances of persons appointed to a civil service or civil post by the Secretary of State were charged upon the revenues of the Federation. All

these sums put together would cover over four-fifths of the total expenditure of the Federation. The remaining one-fifth was to be submitted to the vote of the legislature in the form of demands for grants. But any cut in the demand made by the legislature could be restored by the Governor-General if he felt that it would affect any of his Special Responsibilities.

F. The Federal Railway Authority

The proposed transfer of political power into the hands of Indians raised the question of control over railways. Large amounts of British capital were invested in them and Parliament did not want to jeopardize this capital even remotely by any constitutional changes that might be introduced in India.

It was therefore laid down that the executive authority of the Federation in India in respect of the regulation and construction, maintenance and operation of railways should be exercised by the Federal Railway Authority. It was to be a corporate body and was to consist of seven persons to be appointed by the Governor-General. Of these not less than three were to be appointed by him in his discretion and the rest presumably on the advice of his Ministers. From among the members a President of the Authority was to be appointed by the Governor-General in his discretion. Their salary and allowances were to be determined by the Governor-General in his individual judgement. At the head of the executive staff of the Authority there was to be a Chief Railway Commissioner appointed by the Governor-General exercising his individual judgement after consultation with the Authority.

Federal Control over Policy. The Authority in dis-

charging their functions were to be guided by instructions given to them by the Federal Government. The Governor-General might also issue to the Authority such directions as he might deem necessary in respect of matters involving any of his Special Responsibilities or in regard to which he was required to act in his discretion or in his individual judgement. The Authority would have to give effect to such directions.

A special arrangement was thus proposed for the administration of Indian railways after the inauguration of the Federation. They were not to be a Reserved subject in charge of the Governor-General and outside the competence of the legislature. But they were not to be in charge of a responsible Minister either. The Authority to which their management was entrusted was to be dominated by the Governor-General acting in his discretion in many ways. And no change could be brought in its constitution and functions except with the sanction of the British Parliament because any such change would mean an amendment of the Act of 1935 which was a parliamentary measure.

9

THE PROVINCES IN THE FEDERAL CONSTITUTION

NEW STATUS OF THE PROVINCES. The Act of 1935 proposed a constitutional structure that was based on the concept of provincial autonomy and federation. The status of the Indian provinces therefore underwent a vital change in the new Indian polity. They could no longer be considered as mere territorial divisions, created by the Central Government for its own convenience, and enjoying merely a devolved and not an original authority. A federal unit has an independent existence of its own. It possesses certain rights which are guaranteed to it under the Constitution, and which cannot be tampered with or violated by the Federal Government. The relations between the Government of India and the provinces were conceived and defined on a federal basis in the Act of 1935. A distinct sphere of activity was marked out and assigned to each one of those two entities. A third common sphere was created for their concurrent jurisdiction and action. Three separate lists of subjects were compiled in accordance with this threefold division of governmental functions.

THE PROVINCES AFTER 1937. The Act prescribed that the following should be the Governors' Provinces: Madras, Bombay, Bengal, the United Provinces, the Punjab, Bihar, the Central Provinces and Berar, Assam, the North-West Frontier Province, Orissa and Sind. The total was eleven. Sind and Orissa were newly created. Burma was separated from and ceased to be a part of India. The Act

provided the same kind of constitutional structure for all the provinces, with variations of detail appropriate to their individual requirements and peculiarities. Certain areas in some of the Governors' Provinces were inhabited by people who were almost in a primitive condition of life and were totally unfit for any kind of advanced or democratic government. Parliament decided that the administration of such backward tracts and the welfare of their uneducated inhabitants could not be entrusted to the care of responsible Indian Ministers. That duty was placed in the hands of the Governor.

A few smaller areas were formed into independent units for various reasons, and special administrative arrangements were made for them. For instance, Delhi as the capital of the whole country was not incorporated in any particular province. British Baluchistan, standing on the frontier of India, and Ajmer-Merwara standing as a British island in the midst of the territory of the Rajput States were classed independently. The Act prescribed that Delhi, British Baluchistan, Ajmer-Merwara, Coorg, the Andaman and Nicobar Islands and the area known as Panth Piploda (in Central India) should be Chief Commissioners' Provinces. These provinces were to be administered by the Governor-General acting, to such extent as he might think fit, through a Chief Commissioner to be appointed by him in his discretion.

The creation of new provinces and the alteration of the boundaries of the existing provinces were vested in His Majesty and he could exercise them by issuing Orders-in-Council. But before any such order was issued, the opinion of the Government and the legislatures of the provinces concerned, as also the opinion of the Federal Government and federal legislature, had to be ascertained.

Area and Population of the Provinces

As given in the Indian Delimitation Committee's Report, 1936

Name of Province	Area	Total population	General including scheduled castes	Scheduled castes	Mohammedans	Anglo-Indians	Europeans	Indian Christians
Madras ...	126,663	44,183,609	39,083,342	6,944,747	3,290,294	28,630	12,341	1,703,791
Bombay ...	77,221	18,192,475	15,602,932	1,673,896	1,602,385	14,176	18,028	267,460
Bengal ...	72,514	50,114,002	22,493,659	9,124,925	27,497,624	27,573	20,895	129,134
United Provinces ...	106,248	48,408,763	40,905,586	12,591,525	7,181,927	11,263	22,043	170,216
Punjab ...	91,919	23,551,210	6,328,415	1,440,750	13,302,991	2,995	19,106	392,144
Bihar ...	69,348	32,371,434	28,194,621	4,490,599	4,140,327	5,892	5,390	331,185
Central Provinces and Berar ...	99,920	15,507,723	14,815,054	2,927,343	682,854	4,740	5,075	35,531
Assam ...	27,572	8,214,076	4,858,779	572,490	2,753,563	558	2,961	117,200
North-West Frontier Province ...	13,518	2,425,003	142,977	...	2,227,303	150	7,947	4,116
Orissa ...	32,681	8,174,251	8,043,018	1,005,983	131,233	635	856	36,573
Sind ...	46,378	3,887,070	1,015,225	99,551	2,830,800	1,930	6,576	6,627
India—excluding Burma and Aden ...	1,575,107	338,119,154	238,622,602	50,250,347	77,049,868	119,143	274,029	5,570,240
British India—excluding Burma and Aden ...	862,599	256,808,309	177,175,450	39,137,405	66,392,766	101,380	238,592	3,193,337

10

THE AMBIT OF PROVINCIAL AUTONOMY

THE LAW-MAKING POWERS OF A PROVINCE. The constitutional position in respect of the powers of legislation to be exercised by the Federation and the provincial units was clearly stated in the Act. It was laid down that the federal legislature had, and the provincial legislature had not, power to make laws in respect of any matter enumerated in the Federal Legislative List; that the provincial legislature had, and the federal legislature had not, power to make laws in respect of any matter enumerated in the Provincial Legislative List; and that the federal legislature, and the provincial legislature also, had power to make laws in respect of any matter enumerated in the Concurrent Legislative List.

A special provision was made for cases of grave emergency when the security of India was threatened, whether by war or by internal disturbance. On such exceptional occasions the federal legislature would have power to make laws for a province with respect to any matter enumerated in the Provincial Legislative List.

In spite of the delimitation of legislative spheres, the federal and a provincial legislature might both happen to have passed Acts on an item which belonged to the Federal or to the Concurrent List. A provision of the provincial law might be in conflict with or repugnant to a provision of the federal law. In such cases it was laid down that the federal law should prevail and that the provincial

law, to the extent of the repugnancy, should be void.

The previous sanction of the Governor-General, given in his discretion, was made obligatory for the introduction of certain kinds of Bills or amendments in a chamber of the provincial legislature.

Elaborate provisions were made with respect to discrimination by the Indian legislatures against British subjects domiciled in the United Kingdom or Burma. They applied both to federal and provincial laws. Provinces were therefore precluded from passing any kind of discriminatory legislation against British subjects, British companies and corporations, British ships and aircraft, British-registered medical practitioners, British persons carrying on any occupation, trade or business, etc.

THE EXECUTIVE POWERS OF A PROVINCE. It was distinctly provided that the executive authority of each province extended to matters with respect to which the legislature of the province had power to make laws. Within the framework of the Federation, the provincial sphere was differentiated and it was entrusted to the provincial governments. However, certain restrictions have necessarily to be imposed on the executive freedom of even autonomous provinces when they are federated together in one composite whole. In the federal constitution of a country like India, the number of such restrictions and the scope for their operation was conspicuously large. That was inevitable in an atmosphere of Reservations, Safeguards and Special Responsibilities. Laws passed by the federal legislature in respect of subjects enumerated in the Federal Legislative List had application in the whole country, and their administration and execution was entrusted to the Federal Government. To that extent the latter had *locus standi* and definite right of operation in the provincial

territory. The Governor-General might entrust to a province functions relating to any matter to which the executive authority of the Federation extended. An Act of the federal legislature might also confer powers and impose duties upon a province or its officers in respect of subjects which were not enumerated in the Provincial or Concurrent Legislative Lists. Any extra cost of administration incurred by a province for this purpose was to be paid by the Federation.

The executive authority of a province had to be exercised so as not to impede or prejudice the exercise of the executive authority of the Federation. The latter could give such directions to a province as might appear to the Federal Government necessary for that purpose. The Federation could require a province to acquire any land situated in a province for a federal purpose at the expense of the Federation.

Disputes between the provinces about supplies of water from any natural source had to be referred by the Governor-General to special *ad hoc* commissions, and after considering reports made by them the Governor-General had to give decision in the matter of the complaint and to issue the necessary orders.

It was lawful for His Majesty-in-Council to establish an Inter-Provincial Council for dealing with problems affecting more than one province.

The Act prescribed that the Governor-General acting in his discretion might at any time issue orders to the Governor of a province as to the manner in which its executive authority was to be exercised for the purpose of preventing any grave menace to the peace and tranquillity of India or any part of it. As the ultimate and residuary responsibility for the peace and tranquillity of the whole of India

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rested upon the Governor-General, it was felt that he should have wide powers to give directions to any Governor. It will be found that the clause was very generally worded and could extend to and cover any action of a Provincial Government. It was in the exercise of this power that the Governor-General issued orders in February 1938 to the Governors of the United Provinces and Bihar preventing the wholesale release of political prisoners in those provinces in spite of the fact that the measure was initiated and sanctioned by the responsible Ministers of the provinces, backed by their respective legislatures.

If the Governor-General had in his discretion declared by a Proclamation that a grave emergency existed whereby the security of India was threatened whether by war or internal disturbance, the federal legislature had power to make laws for a province or any part of it with respect to any of the matters enumerated in the Provincial Legislative List. When such a Proclamation was in operation whereby the Governor-General had declared that the security of India was threatened by war (not by internal disturbances), the Federal Government could give directions to a province as to the manner in which its executive authority was to be exercised. They were thus authorized to take, in times of war, executive action in the exclusively provincial spheres by appointing their own officers or agents to function in the provinces.

THE FINANCIAL POWERS AND RESOURCES OF A PROVINCE. The Act of 1935 distributed subjects between the Federal and Provincial Governments by the compilation of separate Lists. All revenues derived from subjects in the Federal List would naturally go to the Federation. Similarly, all revenues obtained from subjects in the Provincial Legislative List would be taken by the provinces. But some

additional sources of income were also provided for the latter. A distinguished financial expert, Sir Otto Niemeyer, was subsequently asked to make recommendations for determining some important details which were not laid down precisely in the Act. His report was published in 1936 and all the suggestions it contained were accepted.

The following were among the main sources of income to the provinces from subjects enumerated in the Provincial Legislative List: land revenue; excise duties on alcoholic liquors; taxes on agricultural income; taxes on lands and buildings; duties in respect of succession to agricultural land; taxes on professions, trades, callings and employments; taxes on the sale of goods and advertisements; cesses on the entry of goods in a local area; taxes on luxuries, including taxes on entertainments, amusements, betting and gambling; stamp duty in respect of documents other than those specified in the Federal Legislative List.

Over and above the proceeds of taxation in respect of matters in their own sphere, the provinces were to have the following potential sources for obtaining further income for their own use:

(i) Duties in respect of succession to property other than agricultural land; terminal taxes on goods and passengers carried by railway or air; taxes on railway fares and freights. All these taxes were to be levied and collected by the Federation, but their net proceeds were to be wholly assigned to the provinces. The Federation could however levy a surcharge on these items for its own purposes.

(ii) Income-tax: This item was a wholly Central source of revenue till 1937. Even thereafter, it was to continue to be levied and collected by the Federation. But it was provided that a prescribed percentage of the net proceeds in any financial year of such a tax should be assigned to

the provinces and distributed among them. It was decided, after the Niemeyer Report, that 50 per cent of the net proceeds of this tax should be assigned to the provinces for their use.

(iii) Duties on salt; federal duties of excise; export duties. These were to be levied and collected by the Federation. But the whole or part of the net proceeds could be paid to the provinces by an Act of the federal legislature. The Niemeyer Report recommended—and the recommendation was accepted—that 62½ per cent of the net proceeds of the jute export duty be assigned to the provinces in which jute is grown. Bengal and Assam were the chief gainers by this concession.

It is a matter of primary importance that the units of a federation should be solvent. The grave financial condition of any province cannot be looked upon as the domestic concern of that particular unit; it affects the whole country and must be taken cognizance of by the Central Government. Provision was therefore made for grants-in-aid by the Federation to such provinces as might be in need of money. The power of borrowing money upon the security of its revenue had been conferred upon the province. The conditions and limits of such loans were to be determined from time to time, by an Act of the provincial legislature. No moneys could be borrowed outside India without the consent of the Federation. The latter could also make loans to a province or give a guarantee in respect of loans raised by a province.

11

THE PROVINCIAL EXECUTIVE: THE GOVERNOR

APPOINTMENT, QUALIFICATION AND SALARY. The office of Governor was very old in the history of British India. It was in existence for nearly three centuries. Till the middle of the eighteenth century, the duties of the Governors were comparatively simple. The number of Governors was only three and they were located in the cities of Madras, Bombay and Calcutta. When the Company began to be involved in Indian politics, the Governors were called upon to fight wars and to try their hands at diplomacy. The Regulating Act therefore created the office of Governor-General. His supremacy extended in course of time to the whole country. But none the less, the Governors continued to be responsible heads of large territorial areas and were invested with great prestige and authority. The number of Governors was eleven after the Act of 1935. In the possession and exercise of powers over the provincial units in their charge, all Governors were absolutely equal.

Yet there was a kind of gradation even in the exalted office of Governor. The provinces were not all equal in size. Some were industrially and commercially advanced and enjoyed a large revenue. Others were predominantly agricultural and endowed with smaller resources. Some had a historical tradition of long standing, others were of recent growth. This difference in the circumstances of the provinces was reflected in the salaries and allowances that were sanctioned for their Governors. All these high

SALARIES AND ALLOWANCES PAYABLE TO PROVINCIAL GOVERNORS

Name of province	Annual salary	Annual Allowances									Equipment & travelling charges when appointed from Europe	Leave allowances per month
		Renewal of furniture	Maintenance of furniture	Military Secretary and establishment	Surgeon & his establishment	Band and Bodyguard	Tour expenses	Sumptuary allowance	Miscellaneous including maintenance of cars	Total		
	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	£	Rs.
Madras ...	1,20,000	14,000	21,500	1,21,000	36,600	1,69,000	1,13,000	18,000	92,000	5,76,100	2,000	4,000
Bombay ...	1,20,000	23,000	25,000	1,36,000	33,600	1,23,000	65,000	25,000	1,08,000	5,38,600	2,000	4,000
Bengal ...	1,20,000	20,500	34,000	1,21,000	34,800	1,50,000	1,22,000	25,000	1,00,000	6,07,300	2,000	4,000
United ... Provinces	1,20,000	4,000	14,500	1,16,000	...	...	1,25,000	15,000	23,000	2,97,500	1,800	4,000
Punjab ...	1,00,000	3,000	10,500	88,000	...	...	60,000	12,000	21,700	1,95,200	1,500	4,000
Bihar ...	1,00,000	4,500	13,000	75,000	...	...	60,000	6,000	21,700	1,80,200	1,500	4,000
Central Provinces and Berar	72,000	2,900	9,800	61,000	...	...	26,000	6,000	16,600	1,22,300	1,200	3,000
Assam ...	66,000	1,000	4,000	63,000	...	...	55,000	6,000	14,100	1,43,100	1,200	2,750
North-West Frontier Province	66,000	1,750	5,000	68,000	...	...	18,000	6,000	14,140	1,21,850	1,200	2,750
Sind ..	66,000	1,000	4,000	59,000	...	...	30,000	8,000	17,800	1,91,800	1,200	2,750
Orissa ...	66,000	2,500	8,000	40,000	...	...	35,000	6,000	11,500	1,03,000	1,200	2,750

dignitaries did not receive the same emoluments. There were considerable variations, as is shown by the figures in the statement on page 104.

There was a further important distinction. Technically, all Governors were appointed by His Majesty. However, it was a long-established practice that the Governors of the older Presidencies of Madras, Bombay and Bengal were selected on the recommendation of the Secretary of State for India. They were men in the public life of Britain, holding a prominent place in the party in power and often possessing some amount of parliamentary experience. These governorships were definitely put beyond the reach of persons who were serving in India. They were reserved for the ambition and talent of influential members of the British aristocracy and served as some of the substantial prizes of British public life. On the other hand, the Governors of all the remaining provinces, eight in number, were selected on the recommendation of the Viceroy. They were senior members of the Indian Civil Service, with a long administrative experience in various departments. A young civilian, standing at the lowest rung of the bureaucratic ladder as assistant collector, could hope to rise, through the successive stages of collector, commissioner, and secretary to Government, to the eminence of a provincial Governor. The substantial salary and the immense powers and status of the office made it one of the strongest inducements to young Englishmen to join the I.C.S.

As the Governorships of eight provinces were open to the I.C.S., it could happen that a senior commissioner or secretary who was working under Ministers might find himself suddenly elevated, when a vacancy occurred, to the headship of the province. That was what happened in Orissa in 1938. It would be an untenable position for

Ministers to have to accept as their superior and head a person who had been actually working as their subordinate and to whom they had been giving orders as his superiors. The Congress Ministry in Orissa took strong objection to the practice and a constitutional crisis was threatened. But ultimately a compromise was arrived at. The impropriety involved in placing a bureaucratic subordinate over the head of his ministerial superiors was sought to be avoided by appointing senior civilians of other provinces, and not of the province concerned, to temporary vacancies in the Governor's posts.

THREEFOLD CLASSIFICATION OF HIS POWERS. The powers conferred upon the Governor—as also upon the Governor-General—by the Act of 1935 can be divided into three categories. He could act (i) in his discretion; or (ii) in his individual judgement; or (iii) on the advice of his Ministers who were responsible to the legislature. The matters included in each one of these three categories might pertain to any aspect of the administration. They might be executive, legislative, financial, concern the public services, and in fact covered the whole field of government. The classification was not based on an enumeration of different departments. It was made by a definition of the manner in which the Governor was called upon to exercise his authority in the task of governance.

Where the Governor was empowered to act in his discretion, he was not required to consult his Ministers at all. He could take decisions by himself and give effect to them. To this extent there was a real diminution of provincial autonomy. Some of the most vital subjects of provincial administration were brought under the operation of this arrangement. There were no less than 32 cases in which the exercise of this power was provided. Where the

Governor was empowered to act in the exercise of his individual judgement, he was expected to do so after consultation with his Ministers. He was, of course, not bound to accept the Ministers' views and could act even in opposition to them. But the procedure of work was so formulated that Ministers could acquaint the Governor with their considered opinions and thereby attempt to influence his decision. The total number of such cases was calculated to be 16, in addition to the comprehensive Special Responsibilities. This was another substantial slice cut off from provincial autonomy. It may be added that both in the exercise of his discretionary powers and in the exercise of his individual judgement the Governor was not forbidden by law to consult his Ministers or to abide by their advice. If he decided to take them into his confidence and share his responsibilities with them, there was nothing to prevent him ordinarily from doing so.

The third category consisted of items in which the Governor had to act on the advice of his Ministers. And as the latter were members of the legislature and responsible to it, the concept of provincial autonomy may be supposed to be tangibly represented by and in this particular domain. The Instrument of Instructions definitely laid down that in all matters within the scope of the executive authority of the province, save in relation to functions which were to be exercised in his discretion, the Governor was to be guided by the advice of his Ministers. But to be so guided ought not to prove inconsistent with the fulfilment of any of his Special Responsibilities or with the proper discharge of those functions which had to be performed in the exercise of his individual judgement.

It must be noted that the Governor was not excluded from the provincial Cabinet as his master, the King of

England, is excluded from the British Cabinet. He was empowered not only to be present at meetings of the Council of Ministers but also to preside over them.

RELATIONS TO MINISTERS AND EXECUTIVE POWERS. The Act laid down that the executive authority of a province was to be exercised by the Governor and he was to have a Council of Ministers to aid and advise him in the exercise of his functions, excepting in so far as he was required by the Act to exercise his functions in his discretion. He was also not prevented from exercising his individual judgement when under the Act he was required to do so. Thus there was no obligation to consult Ministers in the former sphere; there was no obligation to carry out their advice in the latter sphere even if it was sought and given.

Ministers had to be chosen and summoned by the Governor in his discretion and they could be similarly dismissed by him. It was directed in the Instrument of Instructions to the Governor that he should use his best endeavour 'to select his Ministers in the following manner, that is to say, to appoint, in consultation with the person who in his judgement is most likely to command a stable majority in the legislature, those persons (including so far as practicable members of important minority communities) who will best be in a position collectively to command the confidence of the legislature. In so acting he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers.' He had therefore to send for the leader of the largest political party in the legislature and ask him to form a Ministry.

The Governor, in his discretion, could preside over meetings of the Council of Ministers. He had also, in his discretion but after consultation with the Ministers, to make rules for the most convenient transaction of the

proceedings should be taken in relation to the Bill, clause or amendment. This was an important reserve power which could be used against legislation introduced on the initiative of responsible Ministers. Till the Act of 1935, the Governors had no power to promulgate ordinances. It was vested exclusively in the Governor-General, who could issue ordinances for a province. In consistence with their new status as heads of federal units, that power was now conferred upon the Governors. Two types of ordinances were provided for. In one, the promulgation would be made on the advice of Ministers if, at any time when the legislature was not in session, the Governor was satisfied that immediate action was necessary. The other type of ordinance was of a more absolute character. If at any time—that is, whether the legislature was in session or not—the Governor was satisfied that immediate action was necessary for the discharge of those of his functions which had to be performed in his discretion or in the exercise of his individual judgement, he could promulgate an ordinance as he thought fit. It did not need to be laid before the provincial legislature at any time and could continue to be in operation for a maximum period of six months at a stretch, to be followed by a further extension not exceeding six months if found necessary.

The Montford Reforms had created a new weapon for use by the Governor-General and the Governor. It was called the power of Certification. The Act of 1935 not only retained this instrument of absolutism but made it much simpler to operate. It was laid down that if at any time it appeared to the Governor that certain legislation was necessary for the discharge of those of his functions which had to be performed in his discretion or in his individual judgement, he could adopt one of two courses:

of provincial autonomy, the Ministers and legislatures had no control over officials in the Indian Civil Service, the Indian Police Service and others appointed for the province by the Secretary of State, though their salaries were charged on the provincial revenues.

RELATIONS TO THE LEGISLATURE AND LEGISLATIVE POWERS. The Governor in his discretion could summon the legislative chambers or chamber in a province, could prorogue them and could dissolve the lower house. However, as the conduct of government, including legislation, was entrusted to responsible Ministers, this power had to be exercised in a manner which would suit their convenience. The initiative and decisions in this respect would therefore automatically tend to lie more with the Prime Minister than with the Governor. Similarly, the Governor could address either chamber singly or both together. He could, in his discretion, send messages to the legislature in regard to a pending Bill or for any other purpose. Whenever there was disagreement between the two chambers in provinces where the bicameral system had been instituted, the Governor, in his discretion, had to summon a joint sitting to remove the deadlock. His assent, given in his discretion, was required for any Bill passed by the provincial legislature.

The Governor in his discretion but after consultation with the Speaker or President had to make rules for regulating the procedure and conduct of business in the legislature. If the Governor in his discretion certified that the discussion of a Bill or clause or amendment introduced or proposed to be introduced in the legislature would affect the discharge of his Special Responsibility for the prevention of any grave menace to the peace and tranquillity of the province, he could in his discretion direct that no

proceedings should be taken in relation to the Bill, clause or amendment. This was an important reserve power which could be used against legislation introduced on the initiative of responsible Ministers. Till the Act of 1935, the Governors had no power to promulgate ordinances. It was vested exclusively in the Governor-General, who could issue ordinances for a province. In consistence with their new status as heads of federal units, that power was now conferred upon the Governors. Two types of ordinances were provided for. In one, the promulgation would be made on the advice of Ministers if, at any time when the legislature was not in session, the Governor was satisfied that immediate action was necessary. The other type of ordinance was of a more absolute character. If at any time—that is, whether the legislature was in session or not —the Governor was satisfied that immediate action was necessary for the discharge of those of his functions which had to be performed in his discretion or in the exercise of his individual judgement, he could promulgate an ordinance as he thought fit. It did not need to be laid before the provincial legislature at any time and could continue to be in operation for a maximum period of six months at a stretch, to be followed by a further extension not exceeding six months if found necessary.

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(i) he might enact a so-called Governor's Act containing any provisions he considered necessary, or (ii) he could send to the legislature the draft of a Bill which he considered necessary. In the latter case, the legislature could present an address to the Governor, within a period of one month, expressing its opinion on the Bill. He could then pass it into a Governor's Act, either with such amendments as he deemed necessary or in its original form. These Governor's Acts had the same force and effect as Acts passed by the provincial legislature. A single mortal head of a provincial government was thus enabled, in the plenitude of his wisdom and authority, to defy the collective opinion of scores of elected representatives who constituted the legislature of the province. Even as an extraordinary provision, it suggested an incongruous despotism in the picture of what was alleged to be full provincial autonomy.

FINANCIAL POWERS. The Governor had considerable powers in matters of finance. It was his duty to see that for every financial year a budget was prepared for the province and laid before its legislature. In respect of the votable portion of the budget, the Legislative Assembly of the province could assent to, refuse, or reduce any demand. But if, in the opinion of the Governor, the refusal or reduction of any such grant would affect the due discharge of any of his Special Responsibilities, he could restore, wholly or partly, the cuts that may have been made by the Assembly. This was also a pernicious reproduction of the old power of certification. No demand for a grant could be made except on the recommendation of the Governor.

Bills or amendments on the following subjects could not be introduced in the provincial legislature except on the recommendation of the Governor: (i) for imposing or increasing any tax; (ii) for regulating the borrowing of

money or the giving of any guarantee by the province; (iii) for declaring any expenditure to be expenditure charged on the revenues of a province or for increasing the amount of any such expenditure.

SPECIAL RESPONSIBILITIES. The Act of 1935 was full of many reservations and safeguards. The grant of political power was invariably accompanied by certain restrictions or other counteracting provisions which minimized the extent of the grant. In pursuance of that policy, a new class of obligations was created under the constitution. They were known as the Special Responsibilities of the Governor-General and the Governor, and those high officials were required to fulfil them in the exercise of their individual judgement.

The following list was enumerated for the Governor: (i) The prevention of any grave menace to the peace and tranquillity of the province; (ii) the safeguarding of the legitimate interests of the minorities; (iii) securing the rights and the legitimate interests of the Services; (iv) the prevention of any kind of discrimination against British citizens in the sphere of executive action; (v) securing the peace and good government of the Partially Excluded Areas; (vi) protection of the rights of the Indian States and the rights and dignity of their rulers; (vii) securing the execution of the orders and directions issued by the Governor-General in his discretion.

It will be easily seen that the object of defining these Special Responsibilities was not merely to set aside a distinct group of departments for the personal management and attention of the Governor. They did not attempt to introduce a division of the Provincial Government into two sections, one handed over to the Ministers in which they could have complete freedom, and the other retained and

reserved for the Governor. In fact, they were generic in their conception and could be interpreted to apply to the whole sphere of the Provincial Government.

EMERGENCY POWERS. In the working of the parliamentary system in Britain, a constitutional crisis would lead either to the resignation of Ministers or to the dissolution of Parliament, and the dispute is ultimately settled by the verdict of the electorate. There may be brought about a change, but not a paralysis, of Government. But the position in India was different. The Act of 1935 and the constitutional structure that it created were essentially based on the doctrine of self-government with safeguards. They left the ultimate authority over India in many important respects in the hands of the British people. The possibility of a grave conflict was inherent in such a situation. The Governor might disagree with his responsible Ministers and the provincial legislatures, and neither might be in a mood to yield. The majority party in the provincial legislatures might then refuse to form a Ministry and not allow others to form it. There would thus be complete deadlock, and all administration would be threatened with stoppage.

The Act made special provisions to meet abnormal situations of this type. It empowered the Governor to issue a Proclamation if at any time he was satisfied that a situation had arisen in which the government of the province could not be carried on in accordance with the provisions of the Act. By such a Proclamation the Governor could (i) declare that his functions would be exercised by him in his discretion, and (ii) assume all or any of the powers vested in or exercisable by any provincial body or authority. The Proclamation might suspend, in whole or in part, the operation of any provision of the Act relating to any provincial body or authority, except the High Courts.

Such a Proclamation would cease to operate at the end of six months after it was issued, unless allowed to be further continued by resolutions of Parliament. In no case, however, could it remain in force for a period of more than three years. Thus all the executive and legislative work in the province could be temporarily taken over by the Governor directly.

Within less than three years of the introduction of provincial autonomy, the Governors of eight provinces—Bengal, the Punjab and Sind were the exceptions—were unexpectedly called upon to exercise this emergency power, and to suspend the normal working of the provincial constitution. The British Government's declaration of their war aims, particularly with reference to India's right of self-determination, was considered to be unsatisfactory by the Indian National Congress, and in pursuance of the mandate issued by that body the Congress Ministries resigned their posts early in November 1939. As the Congress party held a majority of seats in the legislatures of eight provinces, the formation of alternative Ministries in them was impossible. Even the dissolution of the legislatures would not have changed their political complexion, and matters would not have improved.

In these exceptional circumstances, the Proclamation authorized by Section 93 was issued by the Governors, and from the first week of November 1939 all powers of government within their respective territorial zones were assumed by them. After that, the administration of most of these provinces was carried on by the Governor with the assistance of Advisers, either two or three in number, who were specially appointed by him. They were senior members of the I.C.S. serving in the province. There was thus a complete reversion to bureaucratic rule. World War II

came to an end in 1945. A few weeks earlier Parliamentary elections were held in England and the Labour Party came into power. With these very important two-fold changes in circumstances, the political tension in India naturally eased. Elections were held to the provincial legislatures, Section 93 was revoked, and responsible Ministers were installed in office early in 1946.

INSTRUMENT OF INSTRUCTIONS. The Joint Parliamentary Committee expressed the opinion that the adoption of the English constitutional form need not imply the establishment of a system analogous in all respects to that which prevails in England. India's political development must be in harmony with her own traditions and circumstances. The Dominion and Colonial Constitutions had recourse to the device of what is known as the Instruments of Instructions in order to impart the necessary flexibility to their working. It was recommended that Instrument of Instructions might similarly be issued to the Governor-General and Governors in India. They should amplify the meaning and spirit of some of the provisions of the Act, particularly those that defined the powers, responsibilities and duties assigned to and imposed on those high officials, and lay down particular practices and procedure. The Instrument would have vital importance in the evolution of the new Indian Constitution. For example, Ministers had no constitutional right, under the Act, to tender advice to the Governor upon matters which were placed in the Governor's discretion, though he could and often would consult them. If at some future time it seemed that this power of consultation might be made mandatory and not permissive, there would be nothing inconsistent with the Act in an amendment of the Instrument for such a purpose. The Instrument could thus be utilized to stimulate constitutional

progress without introducing any structural change in the Act. There were twenty-one clauses of the Instrument that was issued soon after the Act of 1935 was passed and they referred to matters concerning the executive authority of the province and the legislature.

The following is a brief summary of some of the important clauses:

Ministers should be appointed in consultation with the person who is most likely to command a stable majority in the legislature. As far as practicable they should include members of the important minority communities. A sense of joint responsibility should be fostered among them and they should be in a position collectively to command the confidence of the legislature.

The Governor should be guided by the advice of his Ministers except when he is required to act in his discretion or in his individual judgement. But the Ministers should not be enabled to rely upon his Special Responsibilities in order to relieve themselves of their own.

The Services should be safeguarded from any inequitable executive action, in addition to the protection of the rights guaranteed to them.

Discrimination against British interests of any kind should be prevented, even if it meant differing from the Ministers.

In giving assent to or withholding it from Bills, the Governor should pay particular regard to his Special Responsibilities.

Secretarial Staff of the Governor. It will be easily realized from the foregoing description that the Governor was not merely a titular head of the province, but was required to perform a large number of duties and play an active part in the administration of the province. It was

therefore considered essential that he should have at his disposal an adequate personal and secretarial staff to assist him in the fulfilment of his obligations. Accordingly, the Act provided that every Governor (and also the Governor-General) should have his own secretarial staff, appointed by him in his discretion. The salaries and allowances of persons so appointed and the office accommodation and other facilities to be provided for them were to be determined by the Governor in his discretion. All the expenses incurred in this connexion were charged on the revenues of the province and were therefore non-votable by the legislature.

IMPORTANCE OF THE OFFICE. The cumulative effect of all these powers, normal and special, ordinary and extraordinary, legislative, executive and financial, made the position of the Governor extremely formidable, if not invincible, in the working of the Provincial Government, at least in the strictly legal interpretation of the Constitution. By no stretch of imagination could he be described as a mere constitutional head, a dignified ornament which shone with light but was without life. However, during the earlier two or three years of the working of the new scheme (1937-9), the Governors do not seem to have attempted to impose their will upon the popular Ministries by threatening to exercise their legal powers, though, subsequently, complaints about their undue interference were publicly made. With the withdrawal of British control over India in 1947, the office of Governor underwent radical changes in every respect.

12

THE PROVINCIAL EXECUTIVE: THE COUNCIL OF MINISTERS

APPOINTMENT. By the Act of 1935 the Indian polity was to be shaped in accordance with the ideals of democracy and preferably of the parliamentary or responsible type. The introduction of provincial autonomy was supposed to be a step in that direction. Therefore the pertinent questions to be asked are, Was there a popularly elected legislature in the province, and Was the provincial executive created by and entirely subordinate to it? Under the Act of 1935, the Ministers were chosen and summoned by the Governor in his discretion and they were to hold office during his pleasure. They must of course be members of the provincial legislature. It may be inferred from the Instrument of Instructions that the constitutional practice which is associated with Cabinet formation in responsible governments was to be adopted in India. The Governor had to send for the leader of the largest party in the legislature and entrust him with the task of forming a Ministry.

The experience of the working of provincial autonomy showed that this method of appointing Ministers was almost invariably followed. After elections to the new legislatures were held in the early months of 1937 and the results of those elections were known, the Governor of every province, with the solitary exception of the North-West Frontier Province, summoned the leader of that party which had secured a majority, or the largest number, of seats in the legislature of the province, and asked him to form a Minis-

try. It was only when the invitation was declined by the Congress leaders that interim Ministries were allowed to be formed, as a stop-gap arrangement, by members of the minority parties in the six provinces in which the Congress party had a clear majority. Four months later, when the Congress decided to accept office, the leader of that party in the provincial legislature was entrusted with the task of forming the Government and of choosing his own colleagues for that purpose. The names submitted by the leader, who naturally became the Prime Minister, are known to have been always accepted by the Governor.

QUALIFICATIONS, TENURE AND SALARY. The qualifications of a Minister were not prescribed in the Act, nor could they be so prescribed, except for the requirement that he must be a member of the provincial legislature. It was obvious that a Ministry would be composed of prominent and leading members of a political party. They continued to be in power as long as the party had the complete confidence of the legislature. It is also clear that the power of dismissing, like the power of appointing, a Minister which legally vested in the Governor must in practice be exercisable by the Prime Minister.

The maximum number of Federal Ministers was prescribed by the Act (it was ten), but no such limit was prescribed for Ministers in the provinces. The actual number was determined by the convenience of every province and by the exigencies of party alignments in its politics. All the work of the provincial Government was divided into different sections according to the convenience of the Ministry and the number of its members, and each section, called the portfolio, was assigned to a Minister.

In regard to the salaries of Ministers, an important departure was introduced by the Act of 1935. The Mont-

ford Reforms had made them entirely votable. Members of the legislature were called upon to sanction the amount in respect of every Minister while passing the annual budget. They had the right and the opportunity to reduce or even to reject the whole demand. The Act of 1935 laid down that the salary of Ministers would be fixed by an Act of the provincial legislature, and the Act could be amended whenever any changes were felt to be necessary by the people's representatives. However, the salary of particular individuals who held the office of Minister was not annually submitted to the legislature for its sanction, and it could not be varied during their term of office. In fact it was placed in the list of items which were charged on the revenues of the province and which were therefore non-votable. Hereafter, the only method of direct attack on the Ministers was to propose a motion of no-confidence in them.

The Parliamentary Secretary is a type of official peculiar to the system of responsible government. He is essentially a politician and comes into office with his party and goes out with it. Such Secretaries were appointed in almost all the provinces.

COLLECTIVE RESPONSIBILITY OF THE CABINET. It was one of the greatest defects of the Montford Reforms that they did not introduce the practice of collective responsibility. Governors of some of the provinces even discouraged its adoption. Political opinion in India always insisted that the practice should form an integral part of any constitutional reform introduced in India, and a clause was ultimately inserted in the Instrument of Instructions to the Governor directing him to foster the growth of joint responsibility among his Ministers. The principle was in operation in all the provinces and worked, on the whole,

with success. The Ministers stood before their parties, the public and the Governors as indivisible units, and full responsibility was taken by the whole body for all the actions of its individual members.

IMPORTANCE OF THE OFFICE OF PRIME MINISTER. The inauguration of self-government in the Indian provinces and the formation of responsible Ministries in them necessarily led to the appointment of a Prime Minister. The Instrument of Instructions to the Governor recognized the existence of the leader of the largest political party in the legislature. It was advised that he should be invited to form the Cabinet. Emphasis was also laid on the need of fostering a sense of joint responsibility among the Ministers and on their being able collectively to command the confidence of the legislature. Governors of provinces did in fact follow the method of sending for the leaders of the largest political party in the newly elected legislatures and requesting them to form a Ministry. Such persons were designated as the Prime Ministers of the provinces. However, the Governor was not only not excluded from the Council but presided over its meetings and conducted its business. The Act had specifically provided that Ministers shall keep him informed of practically all important matters in their respective departments. The bureaucratic subordinates of Ministers, namely the Secretaries, who were heads of the secretariat staff, were required to bring to the notice not only of the Ministers but also of the Governor all those cases which in their opinion might affect subjects left to the discretion or to the individual judgement of the Governors.

Consequent on the presence of Governors at Cabinet meetings, an interesting practice developed in all the provinces in regard to ministerial working. The Governor

was not an active Indian politician and public leader and, in the nature of things, his approach to public opinion in the province could not be other than official, alien, and distant. On the other hand, the Prime Minister and his colleagues were representatives of the party in power, pledged to carry out a definite programme of social and political reform. Quite naturally they would hold their own regular meetings for the discussion of every important question which arose in the conduct of government. Such meetings were informal in the sense that the Governor was not present at them. It was in these meetings that the decisions of Ministers were finally taken and subsequently, in the formal meetings over which the Governor presided, they could be presented as the decisions of a united Ministry. During the first two or three years of the working of provincial autonomy the Governors were, on the whole, known to have accommodated themselves to the wishes of their Ministers and allowed them considerable freedom in carrying out their policies. This fact was publicly acknowledged even by the Congress Ministries which went out of office in 1939.

THE POSITION OF THE SERVICES. The position of the Services in the scheme of provincial autonomy and also in the federal structure was interesting. The Act laid down that appointments to the Indian Civil Service and the Indian Police Service were to be made by the Secretary of State, and he could also make any other appointment whenever he thought it necessary to do so. The rules and regulations about the recruitment of all such persons, about their salary, pensions, leave, dismissal, etc., were to be made by the same authority with the concurrence of the majority of his Advisers. It was one of the Special Responsibilities of the Governor and the Governor-General

to safeguard all the rights and privileges of the Services including their postings and promotions. The Ministers under whom these officers had to serve had not complete control over their subordinates and could not punish them for any infringement of orders.

There thus arose a perplexing and unfortunate situation. The head of the department might settle a policy and issue orders; the agency which had to carry them out might be lukewarm or even hostile to the proposals made by the head. They might therefore be tempted, directly or indirectly, to sabotage a reform of which they disapproved, by hindering its proper execution. Such laxity or indiscipline on the part of subordinates was not directly punishable by the Minister. He had to bring it to the notice of the Governor and try to get the guilty person properly reprimanded. Fortunately, during the few years of the working of provincial autonomy, the relations between the Ministers and the Services were reported, on the whole, to have been satisfactory. It does not appear to have been found necessary in any province to invoke the Governor's Special Responsibility in respect of the Services on account of a major difference of opinion between him and his Ministers.

13

THE PROVINCIAL LEGISLATURE

INTRODUCTION OF THE BICAMERAL SYSTEM. The origin of the legislative powers of the provinces goes back to the year 1807, when the Governors-in-Council of Madras and Bombay were given the power of making regulations for their respective areas. That power was taken away in 1833, and for a period of nearly thirty years all legislative authority for the whole of India was exclusively possessed by the Governor-General-in-Council. In 1861, the law-making power was restored to the provinces. Steady increases in the size, in the elected and non-official elements, and in the powers of the provincial Legislative Councils were effected by the Acts of 1892, 1909 and 1919. The position of the provincial legislatures after the Montford Reforms has been already explained. The changes introduced by the Act of 1935 and the shape given by them to the provincial legislature have now to be studied.

The most important of these changes must be noticed at the outset. For the first time in Indian constitutional history, the bicameral principle was introduced in the provincial sphere. It was provided that there would be two chambers in Bombay, Madras, Bengal, the United Provinces, Bihar and Assam, and one in each of the remaining provinces. The upper chamber was called the Legislative Council and the lower chamber was called the Legislative Assembly.

The structure of the Legislative Councils, wherever they were created, followed the usual lines of an oligarchical

concentration. The number of their members was small. The franchise for their election was extremely high and the constituencies which elected them were very narrow. They inevitably became the focus of all kinds of vested interests in the country. A House which was comprised mostly of big landlords, millionaires, merchant princes and impecunious fragments of a dilapidated aristocracy became an organized stronghold of conservatism and reaction.

Tenure of Membership. Following the model of the federal upper chamber, namely, the Council of State, the provincial Legislative Council was also made a permanent body, never liable to a wholesale dissolution. One-third of its members had to retire every three years and an individual member had a tenure of as many as nine years. This was of course an abnormally long period for any elective chamber. The tenure of the Legislative Assembly was five years, and it could be dissolved by the Governor earlier.

Constitution of the Chambers. The numerical strength of the legislative chambers in different provinces is given in the accompanying tables. It will be seen that the numbers of the Assembly showed a considerable improvement over the limits prescribed by the Montford Reforms. In the old Bombay Legislative Council, for instance, there were only 67 elected members from the Presidency proper, barring the Sind bloc. Now that number was increased to 175. Another reform introduced by the new Act was the elimination of the nominated and official elements from the legislature. They were a great handicap to the popular side. Their solid voting on any question was merely the result of bureaucratic regimentation. Their numbers created false appearances because their votes were cast under executive command. A small

PROVINCIAL LEGISLATIVE COUNCILS

Table of Seats

Province	Total of Seats	General Seats	Mohammedan seats	European seats	Indian Christian seats	Seats to be filled by the Legislative Assembly	Seats to be filled by the Governor
Madras ...	Not less than 54 Not more than 56	35	7	1	3	...	Not less than 8 Not more than 10
Bombay ...	Not less than 29 Not more than 30	20	5	1	...	...	Not less than 3 Not more than 4
Bengal ...	Not less than 63 Not more than 65	10	17	3	...	27	Not less than 6 Not more than 8
United Provinces	Not less than 58 Not more than 60	34	17	1	...	...	Not less than 6 Not more than 8
Bihar ...	Not less than 29 Not more than 30	9	4	1	...	12	Not less than 3 Not more than 4
Assam ...	Not less than 21 Not more than 22	10	6	2	...	...	Not less than 3 Not more than 4

remnant of this system was still retained in the upper chambers both in the provinces and in the Federation.

The president of the Legislative Council was called the President and that of the Legislative Assembly was called the Speaker. There was also a Deputy President and Deputy Speaker. All these officers were elected by the chambers from among their own members. They could be removed from office by a resolution of the chamber concerned passed by a majority of all its members. The salaries and allowances of these officers were fixed by an Act of the provincial legislature. The Act prescribed that at least one-sixth of the total number of members of a Legislative Assembly, and at least ten members of a Legislative Council, must be present at their respective meetings. A Minister could be a member of only one chamber where there was the bicameral system. But he had the right to address a meeting of the other chamber and to take part in its proceedings but not to vote in that chamber of which he was not a member. This was a salutary departure from the English model, and enabled the Government policy to be explained and justified by the person who was directly in charge of it.

CONSTITUENCIES AND FRANCHISE. The province was divided into small territorial areas for the purpose of elections. The district was generally taken as the unit because of the homogeneity it possesses and the facility for organization that it offers. Large cities were formed into groups by themselves. Non-territorial constituencies were formed for commerce and industry, landholders and other special interests. No person could become a voter unless he was twenty-one years of age. No person could become a member of the provincial Legislative Assembly before he attained the age of twenty-five, or of the Legislative Council

Provincial Legislative Assemblies

Table of Seats

Province	Total Seats	Total general seats	General seats reserved for scheduled castes	Seats for backward areas and tribes	Sikh seats	Mohammedan seats	Anglo-Indian seats	European seats	Indian Christian seats	Commerce, Industry, Mining, Planting	Landholders' seats	University seats	Labour seats	General	Seats for Women: Sikh	Seats for Women: Mohammedan	Seats for Women: Anglo-Indian	Seats for Women: Indian Christian
Madras ...	215	146	30	1	...	28	2	3	8	6	6	1	6	6	...	1	...	1
Bombay ...	175	114	15	1	...	29	2	3	3	7	2	1	7	5	...	1	...	...
Bengal ...	250	78	30	...	...	117	3	11	2	19	5	2	8	2	...	2	1	...
United Provinces	228	140	20	...	...	64	1	2	2	3	6	1	3	4	...	2	...	...
Punjab ...	175	42	8	...	31	84	1	1	2	1	5	1	3	1	1	2	...	...
Bihar ...	152	86	15	7	...	39	1	2	1	4	4	1	3	3	...	1	...	...
Central Provinces and Berar ...	112	84	20	1	...	14	1	1	...	2	3	1	2	3	...	...	...	...
Assam ...	108	47	7	9	...	34	...	1	1	11	...	...	4	1	...	...	...	...
North-West Frontier Province	50	9	...	...	3	36	...	...	...	...	2	...	...	...	...	...	...	...
Orissa ...	60	44	6	5	...	4	...	...	1	1	2	...	1	2	...	...	...	...
Sind ...	60	18	...	...	...	33	...	2	...	2	2	...	1	1	...	1	...	...

before the age of thirty. No person could become a member of both the houses of the provincial legislature.

The following is a brief summary of the principal franchise qualifications in the province of Bombay. Similar qualifications were prescribed for other provinces.

(i) The Legislative Assembly: (*a*) those who paid income-tax; (*b*) those who held land assessed to a land revenue of not less than Rs 8 per year; (*c*) those who paid an annual house rent of not less than Rs 60 in the city of Bombay or Rs 18 in any other place; (*d*) those who had passed the matriculation or school leaving examination. Women possessing these qualifications could vote. A woman could also vote if her husband paid income-tax or held land assessed to an annual revenue of not less than Rs 32 or if she was literate.

(ii) The Legislative Council: (*a*) those who paid income-tax on an annual income of not less than Rs 15,000; (*b*) those who held land assessed to a land revenue of not less than Rs 350 per year; (*c*) those who were sardars; (*d*) those who held titles not less than that of Rao Bahadur; (*e*) those who had been members of any legislature, executive councillors, ministers, members of a university senate, judges of high courts, presidents of municipalities or district local boards, chairmen of central co-operative banks, etc. Women possessing these qualifications had the right to vote. A woman was also allowed to vote if her husband was assessed to income-tax on an annual income of not less than Rs 30,000 or if he held land assessed to an annual land revenue of not less than Rs 2,000 or if he was a sardar, etc.

The franchise for the Legislative Assembly in every province was fairly low. It was more restrictive than pure adult suffrage, but the payment of only Re 1-8 as

house rent per month or Rs 8 as land revenue per year could in no way be described as a very high demand. Even when the requirements were so insignificant, the total enfranchised population throughout British India was calculated to be in the neighbourhood of thirty-five million, or only about 14 per cent of the British Indian population. Nothing provides more eloquent evidence of the exceptionally poor standard of life and annual income of the average Indian.

FUNCTIONS AND POWERS. The legislature was the law-making authority in the province, and all laws required to be passed in respect of subjects assigned to the provinces and enumerated in the Provincial Legislative List had to be enacted by its chamber or chambers. They could also enact laws on subjects enumerated in the Concurrent Legislative List subject to certain limitations.

The legislature had been empowered to frame rules for regulating the procedure and conduct of its business, and in the exercise of that power legislative chambers in all provinces had framed elaborate rules for the purpose mentioned. The Bombay Legislative Assembly Rules were 149 in number and the Bombay Legislative Council Rules were 136.

Most of the Bills put before the legislature were initiated by the Ministry. They had a mandate to implement their programmes and therefore a prior claim on the time and attention of the legislature. The Government could allot specific days for private members' business, but the number of days so allotted was small. The procedure in the provincial legislature in respect of the passage of Bills was to a great extent similar to what has been described earlier with regard to the Central Legislature. If a province had two chambers, a Bill, other than a Money Bill, could

originate in either of them. Money Bills could originate only in the lower house, that is, the Legislative Assembly. Every Bill had to pass through three readings in each chamber, and be passed in identical form and language by both chambers before it could become an Act. Separate provisions were made for cases of disagreement between the houses.

The legislature's control over the provincial administration was exercised in the usual way. It might pass resolutions and thereby give definite expression to its views on a matter of public importance. Any of its members could put questions and supplementary questions on administrative affairs, and Ministers were bound to supply all the information required in this way. A member could also move a motion of adjournment to discuss a matter of recent occurrence and of public importance. This gave the Government an opportunity to explain their position and allowed the legislature to express its approval or disapproval of Government policy. Lastly, a direct attack could be launched against the actions and conduct of a Minister or Ministers by moving a motion of no-confidence in him individually or in the whole Ministry.

The budget of the province for every financial year had to be placed before the chamber or chambers of the legislature. It showed separately the expenditure that was charged upon the revenues of the province and was not votable by the Assembly, and expenditure that was votable by it. However, most of the items in the non-votable list could be thrown open for discussion by the Governor. The votable expenditure was to be submitted to the Legislative Assembly (and not to the upper chamber) in the form of demands for grants. The Assembly had power to assent to, to refuse, or to reduce

any such demand, but not to increase it. Any reduction made by it in an amount demanded could be restored by the Governor if he thought that the cut would affect the discharge by him of any of his Special Responsibilities. In the final issue of the Civil Budget Estimates of the Bombay province for the year 1939-40, the authenticated schedule of expenditure showed that out of a total expenditure of Rs 14.06 crores, Rs 3.72 crores were charged upon the revenues of the province and Rs 10.34 crores were voted by the Legislative Assembly.

PRIVILEGES. Subject to the provisions of the Act of 1935 and to the rules and standing orders regulating the procedure of the legislature, there was freedom of speech in every provincial legislature. Members of the Legislative Assembly and Council were entitled to receive such salaries and allowances as might from time to time be determined by an Act of the provincial legislature. The Bombay legislature decided to accept the principle of paying a salary to its members and passed an Act for that purpose in 1937. The amount of the salary was fixed at Rs 75 per month. It was increased to Rs 150 in 1946. Travelling and other allowances were similarly provided.

CONFLICT BETWEEN THE CHAMBERS. Where there are two legislative chambers with co-ordinate powers, there is a possibility of a serious disagreement between them. The Act laid down that if a Bill passed by the Legislative Assembly was not passed by the Legislative Council within twelve months of its receiving the Bill, the Governor could summon the chambers to meet in a Joint Sitting for the purpose of deliberating and voting on the Bill. In such a meeting the vote of the majority of members present would finally decide the issue. No new amendments could be suggested at this stage.

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THE RELATION OF THE EXECUTIVE TO THE LEGISLATURE

THE LEGISLATURE'S CONTROL OVER THE MINISTERS. The claim was repeatedly made for the Act of 1935 that it had established full provincial autonomy. It would therefore follow that all political authority in the provinces was vested in its legislature. How far did such a state of things exist in actual practice? The Act had laid down that the appointment of Ministers had to be made by the Governor. But it was a necessary condition that they must be members of the provincial legislature. The Governor was further instructed to endeavour to select them in such a manner that they were able collectively to enjoy the confidence of that popularly elected body. These were significant provisions. Their inevitable result, in normal circumstances, would be that the Ministers were appointed, in effect, by the legislature, which was really the nation in miniature for the time being.

A large portion of the expenditure on ministerial departments was made subject to the sanction of the legislature. That body could refuse to sanction any amount if it disapproved of the conduct of Ministers and desired that they should resign. Such a refusal of supplies was bound to have an immediate effect. In fact, the legislature was allowed to adopt even a more direct method of telling Ministers that they were not wanted. It could pass a definite motion of no-confidence in them and thus command that they should leave their office. In the face of

such a straight attack, no Ministry could survive.

CONTROL OVER FINANCE AND LEGISLATION. The real difficulties of the legislature did not arise on account of its inadequate control over the Ministers, but on account of serious deductions made from its own powers in several ways. All the expenditure of the Provincial Government was not left to be determined and regulated by the legislature's will. The budget was divided into two parts, consisting of votable and non-votable items. The latter were deliberately excluded from the authority of the elected representatives of the people, though discussion on them was permitted. The non-votable expenditure amounted to about 30 per cent of the total expenditure. This meant a considerable watering down of the very concept of provincial autonomy.

Even in regard to items that were votable, the dictation of the legislature was not final. Its members could make cuts in the amounts demanded by the Ministers. But if the Governor was satisfied that any such cut was likely to affect any of his Special Responsibilities, he could restore it, wholly or partly, in his own discretion. The creation of such an extraordinary veto was incompatible with a genuine transfer of power to the people of the province.

In matters of legislation also a similar exceptional provision was made. All laws required for the province were to be placed before the legislature for consideration and enactment. This was quite in keeping with democratic principle. However, the Constitution further provided that the Governor, acting alone and in his individual capacity, could enact any law which he thought it necessary to enact. There need not be even the pretence of a consultation between him and the legislature or any attempt on his part to bring them round to his views. Such Governor's Acts,

passed as they were by the single head of the executive in his own autocratic judgement, were an irrefutable evidence of the limitations on provincial autonomy imposed by the Act of 1935.

CONTROL OVER THE SERVICES. As long as the Indian Government was entirely bureaucratic, officers in the Indian Civil Service had to perform both political and administrative functions. They decided policies and also carried them out. The Minister and the bureaucrat were combined in the same person. The grant of self-government to India introduced a fundamental alteration in this privileged status. In proportion as political power was transferred to the Indian people, the Services inevitably receded into the background. The Minister and the legislature began to determine the purposes for which the mechanism of the State should be utilized, and the bureaucracy had to carry out their wishes with efficiency and loyalty.

The Act of 1935 contained a whole Part devoted to an enumeration of the special privileges guaranteed to the superior Services. Their appointment was to be made by the Secretary of State even though they had to work under Ministers. Their salaries, promotion, leave, pensions, etc., were also fixed by the Secretary of State and not by the Indian legislatures though India had to bear the financial burden. Certain important posts were reserved to be filled by members of the I.C.S. No disciplinary action could be taken against these exalted subordinates by their popular superiors, the Ministers. The control of the legislature over this portion of the executive was thus substantially limited. This was a grave drawback to provincial autonomy.

15

THE WORKING OF PROVINCIAL AUTONOMY

What was the net achievement of the Act of 1935 in the sphere of provincial government? Was the autonomy conferred upon the provinces a substantial gain?

There was very severe criticism of the Montford Reforms because in public opinion they were extremely inadequate. The Act of 1935 was supposed to go much further than the older measure, particularly in the provincial sphere. The clumsy structure of dyarchy was abolished. The whole administrative machinery of the province was now entrusted to Ministers who were responsible to and removable by a popularly elected legislature. In appearance, at least, all these changes indicated a remarkable degree of political advance as compared with conditions in the past.

Unfortunately, the impression conveyed by such a broad, simplified outline was not the whole truth. It ignored those important provisions of the Act which were intended to operate as a vigorous negative force. In fact, the new Constitution represented an ingenious blend of plus and minus, of addition and subtraction, of progress and regress. The all-pervading Special Responsibilities of the Governor and the Governor-General and the numerous reservations and safeguards affecting some of the most vital aspects of the administration lurked constantly behind in the constitutional picture, and could emerge at any moment to overwhelm the normal political routine. The

Joint Parliamentary Committee emphasized that the safeguards were not mere paper declarations, dependent for their validity on the good will or timidity of those to whom the real substance of power was transferred. It was said that the Act of 1935 did not introduce in the provinces a system of limited monarchy but a system of limited Ministry. The Governor was not expected to retire into obscurity.

However, the experience of over two years' working of the new scheme which was inaugurated on 1 April 1937 was quite hopeful. In the first election to the provincial legislatures held in accordance with the provisions of the Act, the Congress Party was able to secure a clear majority of seats in six out of eleven provinces. Its leaders were therefore invited by the respective Governors to form Ministries. The Congress, however, demanded, as a condition precedent to the acceptance of the invitation, a definite assurance from the Governors that they would not exercise their special powers of interference so long as the Ministers acted within the Constitution. As no such assurance was given, the majority party refused to form the Government and there was a deadlock. Interim Ministries were formed by the minority parties and they temporarily carried on government till a few weeks before the legislatures were due to be summoned for their very first session. In other provinces, popular Ministries enjoying the confidence of the legislature began to function from the very beginning.

In the meantime, in July 1937, the Viceroy issued a lengthy and comprehensive statement to clarify the whole constitutional position and to explain how the new machinery was expected to work in its daily routine. It conveyed, more or less, the assurance that ordinarily there

would be no interference on the part of the Governor in the day-to-day administration of a province.

After the issue of this statement the Congress Party decided to accept office, and the Government in eight provinces soon came into the hands of its leaders. It was found that, apart from the intrinsic difficulties and limitations of the Act, the Governors were, on the whole, working in a spirit of co-operation and goodwill with Ministers, many of whom had in the past actively participated in the struggle against a bureaucratic government and been sent to jail for sedition or civil disobedience. A crisis did arise in February 1938 in the United Provinces and Bihar when the Ministers felt compelled to resign because the Governors concerned and the Governor-General could not agree with them on the question of the release of political prisoners. But even such a grave crisis was ultimately overcome by negotiation and explanation, and the Ministries returned to duty after it was made clear that it was not the Governor's intention to obstruct them. The same was true of the crisis that arose in Orissa over the appointment of a subordinate bureaucratic official as the Governor of the province. After the withdrawal of the Congress Ministries in November 1939, Mahatma Gandhi declared that the Governors on the whole had 'played the game'. It must also be said that the Ministers on their side endeavoured to remain within the bounds of the Act and did not give any provocation to the Governors to exercise their special powers. The cordiality of their mutual relations was publicly testified to both by the Ministers and the Governors.

Unfortunately, World War II (1939-45) seriously interrupted the progressive realization of the benefits of provincial autonomy. It overshadowed the whole political and

economic scene, and in the nature of things the vigour of activity in many of the peace-time nation-building departments necessarily slowed down. Matters were further complicated when the Congress Ministries tendered their resignations in November 1939. As no alternative Ministries were possible, popular government in those provinces was entirely suspended and the old system of bureaucratic rule was re-established in a large part of India. It must also be noted that even in the non-Congress provinces where provincial autonomy was still working, serious allegations were publicly made by Premiers and Ministers against what were described as the high-handed actions of the Governors (for example in Bengal and Sind). Experience, besides, revealed that the autonomy and freedom of a province could not be easily reconciled with the urgent need of a strong, centralized and common action in the interest of the whole country in times of a grave emergency. The war came to an end in 1945 and popular ministerial government was re-established in all the provinces in 1946.

16

TOWARDS INDEPENDENCE

The Act of 1935 could not satisfy the political ambitions of India. Many of its provisions were severely criticized by Indian leaders. The structure of the All-India Federation that it envisaged was considered by influential Indian opinion to be so retrograde and obnoxious that its implementation was suspended and till the end it remained purely a dead letter. The scheme of provincial autonomy was, however, found to be working fairly successfully and without any serious hitch, and popular Ministries were just beginning to exercise the responsibilities of conducting a government when the smooth course of events, not only in India but in the whole world, was rudely interrupted by the outbreak of World War II in September 1939. India was declared a belligerent by the Viceroy and was called upon to fight on the side of Britain and her Allies.

As in the case of World War I so in the case of this war also, Britain and its Allies declared that they were compelled to fight for the preservation of the ideals of democracy and freedom and of human civilization against the relentless attacks that were launched against them by Fascism and Nazism. Even before the outbreak of the war, Indian leaders had unequivocally denounced those systems and their ideology of regimentation, intolerance and violence. Experience of years subsequent to World War I was still fresh in the Indian mind. At the end of that struggle India did not emerge, as she had expected,

with the same autonomous status which Canada and Australia enjoyed within the British Commonwealth, though she had contributed substantially towards winning that war. Only measures which from the Indian point of view were very inadequate, namely, the Montford Reforms and the Act of 1935, were conceded by the British Parliament and that too after a good deal of agitation and suffering.

When World War II broke out and when India was drawn into it and urged to undertake immense sacrifices in men, material and money because it was a war in the noble cause of democracy, freedom and civilization, the Indian National Congress requested the British Government to give a clarification of its war aims with reference to a country like India which was in the British Commonwealth but which did not enjoy fully the rights of democracy and freedom. They urged Britain to declare that their aim was to treat India as a free nation whose policy would be guided in accordance with the wishes of the Indian people, and further added that the real test of any such declaration was its application in the immediate present, that is, even during the currency of the war. No satisfactory response was received to this request and the Congress decided to withdraw co-operation from the Government. Congress Ministries in the provinces were asked to resign. Later on, under the guidance of Mahatma Gandhi was started the movement of individual Satyagraha with a view to impress upon the British rulers the inconsistency of the attitude they had taken.

Meanwhile, a most unfortunate development was being witnessed in Indian public life and its increasingly dismal and deepening shadow was being cast on the Indian

political and social landscape. The two major communities of India, Hindus and Muslims, often looked upon each other with distrust and suspicion, and, a few exceptions apart, Muslims generally held aloof from nationalist movements in the country against British rule. It is true that during certain periods, particularly during the decade of World War I and subsequent few years, considerable unity seemed to be established between the two communities. But it proved to be very slender and ephemeral and had been completely shattered by the time World War II broke out. Muslims by then had begun to assert that they were a separate nation and must have a separate sovereign state of their own, carved out of the existing Indian territory on the basis of population. No compromise was found to be possible on this issue and the situation became very tense and grave. Mahatma Gandhi and other national leaders were persistently saying that the Hindu-Muslim problem could not be satisfactorily solved unless the third force, namely foreign rulers, disappeared from the scene. There was thus a complete stalemate.

In order to meet India's desires to some extent and to enlist her wholehearted support for the war which had now entered a critical phase, the British Government sent out in March 1942 one of its own Ministers to India, Sir Stafford Cripps. He brought with him definite proposals for constitutional reforms on behalf of the British Cabinet. They, however, did not visualize the immediate establishment of a popular and responsible government at the Centre as demanded by Indians but only dealt with the constitutional structure of the future and the machinery to be set up for deciding upon the nature of that structure. The Cripps offer was therefore rejected by the Congress and agitation for India's complete freedom acquired a

new edge and vigour. It culminated in the famous Quit India resolution passed by the All India Congress Committee in Bombay on 8 August 1942. Mahatma Gandhi and other Congress leaders were put in jail and the political situation deteriorated to an unprecedented extent. The deadlock thus created continued throughout the remaining years of the war which at last came to an end in August 1945.

A few weeks before the conclusion of the war fresh elections were held to the British Parliament and the Labour party was returned with a big majority. A Labour Government was thereupon installed in office, and with the known advocacy by the Labour party of the cause of India's freedom and with its firm assumption of power, the tempo of Indian political life gathered a unique momentum. There was a new approach to the Indian problem. The imprisoned leaders were set free; elections to the central and provincial legislatures were held; popular ministries were restored in the provinces. It was announced that the policy of the new Government would be to help India to obtain her freedom as speedily and fully as possible. In March 1946 a special Cabinet Mission consisting of three members and headed by the Secretary of State, Lord Pethick-Lawrence, was sent out to India. Its purpose was to discuss the Indian problem with Indian leaders and to help in setting up in India a suitable machinery for framing a constitution for the country.

As a result of the talks and discussions that it held the Mission was convinced that differences between Hindus and Muslims on the fundamental issue of preserving the territorial unity and integrity of India were simply irreconcilable and that an agreed solution of the problem was impossible. The Mission, therefore, made its own

proposals as a sort of compromise embodying the largest measure of agreement between the contending parties. They laid down certain basic principles on which the future constitution should be framed in the initial stages, and recommended that a Constituent Assembly should be set up in India at an early date to frame the permanent constitutional structure. The Mission's proposals had a mixed and fluctuating reception. The Muslim League in the beginning accepted them, though under protest. The Congress accepted them with their own interpretation about the grouping clauses. Later on, however, the League withdrew its acceptance in view of what it regarded as non-acceptance by the Congress of the scheme as a whole. Meanwhile elections were held to the Constituent Assembly in accordance with the procedure laid down by the Mission, the Congress capturing almost all the non-Muslim seats and the Muslim League capturing almost all the Muslim seats.

In the context of all these rapid and pregnant developments, an irresponsible executive, entirely devoid of the backing and support of the important political parties functioning in the legislature, was an obvious incongruity and an embarrassment even during the transitional period before the transfer of power. The Viceroy therefore invited leaders of Indian public opinion and of the main political parties to form the Government. The statutory obligation that at least three members of the Viceroy's Executive Council must be officials was removed by a Parliamentary amendment of the Act of 1935. All members of the Executive Council thus constituted were non-officials and all departments of Government including defence and external affairs were offered to them. On 2 September 1946 an interim Government was formed

by Congress leaders headed by Shri Jawaharlal Nehru who was appointed Vice-President of the Council. The Muslim League joined this Government six weeks later.

There was thus established *de facto*, if not *de jure*, a popular Ministry at the Centre. The Viceroy voluntarily abstained from exercising his powers and was expected to continue only as a constitutional head, delegating all his powers to the Ministry. Experience, however, showed that a composite government formed of such heterogeneous and profoundly hostile elements as the Congress and the Muslim League could not work smoothly or even work at all. The acute conflict between the outlook and attitude of the two groups of Ministers produced constant friction and there was a grave danger of the situation getting completely out of hand. The Congress were determined to proceed with the work of the Constituent Assembly which had already been formed in accordance with the procedure laid down by the Cabinet Mission and which consisted of elected representatives from all parts of India. The Muslim League, on the other hand, were not prepared to consider anything less than Pakistan and boycotted the meetings of the Constituent Assembly.

The British Government were apprised of the dangerous turn which events had thus taken and ultimately made the historic announcement on 20 February 1947 that it was their definite intention to take necessary steps to effect the transference of power to responsible Indian hands by a date not later than June 1948. They also made it clear that as the existing Constituent Assembly was not fully representative, the Muslim League having boycotted it, they would have to consider and decide to whom to transfer power, whether to one or to more than one authority. This was a definite acceptance of the principle

of partition and thereafter things began to move very swiftly in that direction. It was obvious that if India was to be divided on the basis of religion, those provinces of India which had a Muslim majority but which contained large non-Muslim blocks of population and territory must be divided in accordance with the same principle. The partition of India logically involved the partition of the provinces of Bengal and Punjab. The Muslim League did, indeed, claim the whole of these two provinces for Muslims. But its claims were not supported by the British Government.

On 3 June 1947 His Majesty's Government issued a statement explaining the plan and procedure which they laid down for the division of the country. First of all, public opinion in the provinces concerned was to be formally ascertained as to whether they should be partitioned. If the reply was in the affirmative steps were to be taken forthwith to effect it. His Majesty's Government also announced that in response to the desire of the major political parties that there should be the earliest possible transfer of power in India, they were willing to anticipate the date of June 1948 by the setting up of an independent government or governments even earlier. They therefore proposed to introduce legislation during the current session of Parliament for a transfer of power on a Dominion Status basis to one or two successor authorities as might be decided by the Indian people. This would be without prejudice to the right of the Indian Constituent Assemblies to decide in due course whether or not to remain in the British Commonwealth.

After ascertaining public opinion in the affected areas in accordance with the procedure laid down, it was decided that the existing political unity of India should

be broken up and that a new state carved out of Indian territory consisting of West Punjab, North-Western Province, Sind, British Baluchistan and Eastern Bengal with the district of Sylhet in Assam, should be brought into existence. These were predominantly Muslim areas of India and were thus constituted into a new sovereign entity in accordance with the principle of self-determination. In July 1947 the Indian Independence Act was passed by the British Parliament. It created the two new Dominions of India and Pakistan, with full freedom to each in all matters. British control over these Dominions was completely withdrawn; the title of Emperor of India was dropped from the British King's titles; the post of the Secretary of State for India as also the India Office were abolished. The Dominions of India and Pakistan were to come into existence respectively on 15 and 14 August 1947. On those historic dates both of them became completely free.

PART II

THE CONSTITUTION

Section I: GENERAL

Section II: THE UNION GOVERNMENT

Section III: THE STATE GOVERNMENTS

Section IV: MISCELLANEOUS

Section I General

1

MAIN FEATURES OF THE CONSTITUTION

CONSTITUTION FRAMED BY A CONSTITUENT ASSEMBLY. During the days of British rule, the nature of Indian polity was determined by the authority and will of the foreign ruler. In the course of the century and a half between 1774 and 1935 several Acts were passed by the British Parliament to regulate the governance of India. The right of framing their own Constitution was denied to the Indian people. However, epoch-making events like World War II radically altered the relationship between the conquerors and the conquered. In fact, that relationship soon came to be completely dissolved, and on 15 August 1947 India became fully independent and free. The Constituent Assembly which had been formed a few months earlier now became a sovereign body whose judgement and authority were absolutely unfettered. It was this elected body, composed of representative Indians, which after elaborate consideration and thought framed the new Constitution.

Elections to the Indian Constituent Assembly were held about the middle of 1946. It was not possible to hold them on the basis of adult franchise because that would have involved an almost intolerable delay in the formulation of the new Constitution. The provincial legislative Assemblies were elected early in 1946 in accordance with

the provisions of the Act of 1935 and as the franchise for their election was quite low the Cabinet Mission felt that it was practicable to consider them as fairly representative bodies for the purpose of electing the Constituent Assembly. Indian political opinion generally concurred in this view. The Mission laid down that each province should be given a total number of seats proportional to its population, roughly on the basis of one to a million; that these seats should be divided between the main communities in each province in proportion to their population; and that the representatives allocated to each community in a province should be elected by members of that community in its Legislative Assembly by the method of proportional representation by the single transferable vote. The maximum number thus prescribed for British India was 292 and for the Indian States 93, the total maximum number being 385. The representatives of the States were to be selected according to a method to be determined by consultation. To the representatives of British India were to be added the member representing Delhi in the Central legislature, the member representing Ajmer-Merwara in the same Assembly, a representative to be elected by the Coorg Legislative Council and a representative of British Baluchistan.

The Constituent Assembly held its first session in New Delhi on 9 December 1946 and occupied itself thereafter with the important and responsible task of framing a Constitution for free India. Three years were laboriously devoted to that difficult task and after a good deal of deliberation and debate the new Constitution was finally adopted in December 1949. Its actual inauguration took place on 26 January 1950 and since that date an entirely new chapter has commenced in Indian history. Never

before have the people of the whole of India, deliberately sitting for that purpose, framed and given a Constitution unto themselves. Never before has a sovereign democratic republic comprising the whole country and unifying its different peoples into an integrated political and administrative framework come into existence by the will of the people. It is a unique and epoch-making landmark in the long and eventful history of this ancient land.

Before proceeding to make a detailed study of the different parts and aspects of the Constitution it would be appropriate to notice briefly some of its outstanding features and the ideals that it seeks to embody. It must be remembered that this Republican Constitution, unlike the British Constitution, is not merely the result of conventions and accidents accumulated in a haphazard manner, or of unco-ordinated decisions taken on particular occasions out of a sense of expediency. It is the deliberate creation of a popular assembly which was specially constituted for that purpose and which was led by men of experience and erudition. They accepted certain fundamental concepts as being vitally necessary for securing the stability and progress of the country and endeavoured to devise a political machine which would make it possible to give practical effect to those concepts and ideals.

THE PREAMBLE AND ITS IMPORTANCE. The study of the Constitution can appropriately start with a reference to what is described as its Preamble. The Preamble, which is generally present in every important enactment, serves the same purpose that is served by the preface or introduction to a book. It indicates broadly the circumstances which have made the enactment necessary, the purpose and objects that it seeks to achieve and the inconveniences

that it strives to eliminate. The Preamble, though included in the Constitution, is not supposed to be its integral part; it is not supposed to confer any power or to create any authority. That is done expressly by articles and clauses in the body of the Constitution. If the language of any of those articles and clauses is at any time found to be ambiguous, elucidation of the point in question may be usefully sought from the wording of the Preamble because it contains a recital of the intentions of those who framed the law and can therefore supply a sort of 'key' to the understanding of ideas which do not seem to be precisely expressed. The Preamble of the Indian Constitution is a grand declaration of the ideals and objectives which the Indian people have set before themselves and have the ambition to realize through the instrumentality of the political structure which they have deliberately created for themselves; it is therefore fully reproduced below.

Preamble

WE THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity;

and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

SOURCE OF POWER. It is one of the fundamental ingredients of the democratic idea that the source of all power lies in the people, that sovereignty vests in the people, that

all authority emanates and is derived from that source and must ultimately be amenable to it. The Indian Constitution has affirmed this principle; its Preamble contains the declaration 'We, the people of India . . . adopt, enact and give to ourselves this Constitution'.

A REPUBLIC. The Preamble also expresses the solemn resolve to constitute India into a Sovereign Democratic Republic. Every one of these expressions has a significance and a meaning. The expression Republic definitely excludes the possibility of kingship or a monarchical form of government being established anywhere in India. It is true that India has voluntarily agreed to continue as a member of what was formerly known as the British Commonwealth, now known only as the Commonwealth, at the head of which stands the British King. That dignitary is, however, accepted purely as a symbolic head, purely as a formal link of the common association between equals. In fact, the Indian Constitution does not even so much as mention the membership of the Commonwealth. It is not an integral part of India's political status but only an extra-constitutional contractual arrangement entered into at will and liable to be terminated at will.

MEMBERSHIP OF THE COMMONWEALTH. The British people, with the proverbial flexibility of their political philosophy and practice, have approved of this position, and the other nations of the Commonwealth have also agreed to it. A conference of the Prime Ministers of all the nations of the Commonwealth, including India, was held in London in April 1949 and the constitutional implications of India's decision to adopt a republican form of government and simultaneously to continue to be a member of the Commonwealth were discussed at length. The conference then unanimously adopted a declaration

accepting and recognizing India's continuing membership of the Commonwealth with the King as its symbolic head in spite of the fact that it had adopted the republican form of government, and 'Accordingly the United Kingdom, Canada, Australia, New Zealand, South Africa, India, Pakistan and Ceylon hereby declare that they remain united as free and equal members of the Commonwealth of Nations, freely co-operating in the pursuit of peace, liberty and progress'.

The British Parliament passed an Act (India—Consequential Provision—Act, 1949) after the new Constitution of India was adopted in the Constituent Assembly in November 1949. This Act provided that no Indian shall suffer any disadvantage because India had been created into a Republic, but that he will be exactly in the same position as citizens of the other members of the Commonwealth. The rights and privileges which citizens of India had enjoyed in the United Kingdom before the inauguration of the Indian Republic will continue to be enjoyed by them as long as it remains in the Commonwealth. It is an eloquent testimony to the elasticity and the ever-growing conception of the Commonwealth that the accommodation of Republican India in what superficially appears to be a monarchical framework was brought about without much difficulty. It is not sentiment so much as self-interest which has prompted India's decision to remain associated with a political combination of which she has been a member for generations and the principles professed by which—democracy, personal liberty, the rule of law, and so on—are shared by Indians.

Even in what were formerly the Indian States, in spite of the emergence of the office of Rajpramukh corresponding to the office of Governor, the monarchical form as

such has disappeared and any attempt to establish kingship anywhere in India would amount to a grave breach of one of the basic principles of the Constitution.

STATUS OF SOVEREIGNTY. In political language, the word 'sovereign' has a twofold connotation. On the one hand, it signifies complete freedom from any outside control or interference, direct or indirect, whether in the internal affairs of a country or in its external policies; on the other hand, it also asserts the unquestioned supremacy of the State within its own territory so that no one under its jurisdiction within the country can defy its authority with impunity. India has thus placed itself on a level with all independent States. It is no longer subordinate to any foreign power as it was during the days of British rule. Neither dictation by foreigners nor attempts at disruption by internal foes can be tolerated by a State which calls itself Sovereign, and it will be the constant duty and concern of free India to vigilantly guard itself against both the dangers.

EMPHASIS ON DEMOCRACY. The adjective 'democratic' is of vital importance because a Republic, by the mere fact of the absence of a ruling monarch, need not necessarily be a democracy. There have been instances of Republics, that is States without kings, in which power was not wielded by the people at large but by small cliques of men and of families, often to the great detriment of the people in the long run. Political power in Republican India is not intended to vest either in a dictator or in a small body of aristocrats and oligarchs, irrespective of whether they are benevolent or otherwise. Democracy, that is, rule of the people, by the people and for the people has been deliberately accepted as an ideal by free India. It is with that end in view that certain fundamental rights

have been guaranteed by the Constitution to every citizen, that adult franchise has been incorporated in the body of the Constitution, and representative elected chambers have been created to carry on and control the work of government. A most important declaration has also been made in the Preamble enunciating the objective of the State to be to secure justice, liberty, and equality in a very comprehensive sense to all citizens.

A FEDERAL STATE. The Sovereign Democratic Republic is intended, broadly speaking, to be of the federal as distinguished from the unitary type. It cannot be said that the new framework fully satisfies what have been currently recognized as the essential canons of a federation. There are several remarkable deviations from the accepted federal theories. But those who framed the Constitution have claimed that inasmuch as a clear demarcation of the Central and State spheres is prescribed by the Constitution itself, each authority being normally supreme within its own sphere, the most essential element in the federation is clearly provided. True, the sphere of the Central Government is made exceptionally wide; but it only means that India has a federal form of government with an exceptionally strong Centre, particularly in times of emergencies and crisis. A keen controversy has centred round this issue and a detailed reference to the different points involved will be found in chapter 8.

PARLIAMENTARY GOVERNMENT. The Indian democracy is of the parliamentary and not of the presidential type. It is intended to function on the British and not on the American model. There is no insistence on the doctrine of the separation of powers as there is in America. The legislature, the executive and the judicature in India are not independent and co-equals in the American sense.

On the contrary, the supremacy of the legislature is definitely laid down. Both in the Centre and in the States the executive is unquestionably subordinate to the legislature and practically made or unmade by its vote. The President and the Governors are intended to be mere constitutional heads, exercising their powers only on the advice of Ministers responsible to the legislature. The amount of independence requisite for the dispensation of justice without fear or favour is guaranteed to the judicature; but it is not endowed with such superior powers and authority as will make it an *imperium in imperia.* The underlying idea is that the will of the people must ultimately prevail; and as this will is reflected from time to time in legislatures which are elected by adult franchise at stated intervals, their opinions should be considered to have a decisive voice, subject to the enforcement of fundamental rights guaranteed by the Constitution to all citizens.

DISAPPEARANCE OF THE INDIAN STATES. Political leaders of India were confronted with a very embarrassing and menacing legacy left by British rule. The territory and the people of the country were artificially cut up into two divisions, namely, British India and the Indian States, the latter numbering about six hundred in all. The rulers of these States were the descendants of the erstwhile ruling potentates in India who had either submitted to, or had been defeated by, the British conquerors. They had been allowed to continue in possession of their territory and also of their status as rulers, subject to the unlimited paramountcy of the conqueror in all matters. On the withdrawal of the British power from India their paramountcy over the Indian States was not automatically transferred to the successor Government: it was announced to have lapsed and all treaties, sanads, and engagements

existing between the States and the Paramount Power, that is, the British masters, ceased to be operative and to have any binding force or validity. All the six hundred States, big and small, thus technically became entirely independent and free. The existence of such numerous, and many of them very petty, sovereign units would have meant a disastrous dismemberment of the country which, but for this superimposed historical accident, was organically one and indivisible in respect of the territory, population, language and culture of the two divisions. Happily, thanks to the great prestige and constructive statesmanship of Sardar Vallabhbhai Patel and the understanding and patriotism displayed by most of the Princes, the destructive potentialities of this difficult situation were peacefully and completely eliminated. The rulers of States were persuaded to renounce their power and authority in the larger interests of the nation as a whole. The process of voluntary merging and integration moved very rapidly and the political and constitutional unity of India was fully achieved without any kind of violent disturbance and within the remarkably short period of a couple of years. It is said that there is hardly a parallel to such an achievement of peaceful national consolidation in the history of the world. The Constitution of India now extends to and comprises the whole country which stands as a complete and unified entity. For the first time in the long and eventful history of this land all its peoples have been politically welded together into a democratic republic.

A SECULAR STATE. Another distinctive feature of the Constitution must be noted. It has made India a secular State. Secularism does not signify a negation of all religion. It does not aim at the abolition of all religious beliefs and practices. On the contrary, a secular State guarantees to

its citizens freedom of faith, worship and conscience, consistent with the security of the State and the ethical standards of a dynamic society. These two limitations are of course extremely important. No religious dogma can be allowed to undermine the existence and integrity of the nation and no religious doctrine or practice which offends the notions of justice, fairness and equality of contemporary society and violates its moral susceptibilities can be tolerated by a country. No religion can be allowed to become a hindrance to social reform and to hold up the progress of the people as a whole on rational lines in accordance with the concepts of a continuously developing social philosophy. What secularism insists on is that no special advantage or disadvantage shall attach to a citizen in any sphere of social, political or economic life merely on account of the fact that he belongs to a particular religion or creed or caste or race or community. The fundamental rights in the Indian Constitution have made this position abundantly clear. Equality before the law and the protection of law are assured to all. The right to practise any profession, freedom of worship and conscience, admission to service under Government, the exercise of franchise, the right to contest elections and to hold any office, and similar other privileges are conferred upon all citizens; disqualifications are prescribed only in the interest of the State as a whole and are common to all. No expenditure from the public exchequer is to be incurred for a sectarian or denominational cause. All these provisions are in conformity with modern thought which regards religion purely as a personal affair embodying a man's beliefs and conceptions about the mystery of creation and his relationship with the Creator, whereas politics deals with the organization of social life and the operation of

the machinery of government for the common good of all. The two are separate and ought not to be allowed to interfere with each other. There may even be people who do not believe in the existence of God and who could yet be good citizens. The vital thing is the cultivation of a sufficiently high level of social ethics and a proper awakening of the social conscience.

2

THE INDIAN UNION: ITS TERRITORY AND CITIZENSHIP

DESIGNATION OF BHARAT. The Constitution has introduced two important innovations in regard to the nomenclature of the country. Firstly, the ancient name Bharat which has a cherished association with India's glorious past but which had fallen into disuse during the days of foreign rule has been resurrected and officially adopted as a designation of India. But it must be distinctly understood that the current and universally familiar name India has *not* been discarded or given up. It continues to be used as freely and frequently as before both in the national and the international spheres.

A UNION OF STATES. Secondly, though the Indian Republic has been given the federal form it has been described as a Union of States. The word Union does not necessarily suggest a unitary state; the Canadian Federation, for instance, is called a Union. But this term was deliberately used by our Constitution-makers to make it clear that 'though India was to be a Federation, the Federation was not the result of an agreement by the States to join in a Federation and that the Federation not being the result of an agreement, no State has the right to secede from it. The Federation is a Union because it is indestructible. Though the country and the people can be divided into different States for convenience of administration the country is one integral whole, its people

a single people living under a single imperium derived from a single source.'[1]

Territory[2]

THE CONSTITUENT STATES. The Indian Union is composed of (*a*) States specified in Parts A, B and C of the First Schedule in the Constitution, (*b*) Territories specified in Part D of the same Schedule, and (*c*) Territories which may be acquired by India at any time. Part A comprises the following States: Andhra[3], Assam, Bihar, Bombay, Madhya Pradesh, Madras, Orissa, Punjab, Uttar Pradesh, and West Bengal. They correspond to the old British Indian provinces. Part B comprises Hyderabad, Jammu and Kashmir, Madhya Bharat, Mysore, Patiala and East Punjab States Union, Rajasthan, Saurashtra and Travancore-Cochin. These include some of the former biggest Indian States and the integrated groups of others. Part C comprises Ajmer, Bilaspur, Delhi, Kutch, Tripura, Bhopal, Coorg, Himachal Pradesh, Vindhya Pradesh and Manipur. These represent the old Chief Commissioners' provinces and some of the viable Indian States which were placed under the authority of Chief Commissioners before the commencement of the Constitution. Part D comprises the Andaman and Nicobar Islands.

All the units specified in Parts A, B and C have the status of the constituent States of the Federation and derive their rights from the Constitution itself. On the other hand, territories specified in Part D and territories which

[1] Dr Ambedkar's speech, *Constituent Assembly Debates*, Vol. III. Part I, p. 43.

[2] The Report of the States Reorganization Commission has suggested important changes in the number and boundaries of States; see the Appendix to this book.

[3] Created out of Madras territory in 1953.

may be acquired subsequent to the adoption of the Constitution will have such rights as regards representation in the legislature and other matters as will be determined and conferred by Parliament. They will be administered by the President through Chief Commissioners or any other authority appointed by him, and by regulations which will have the force of an Act of Parliament.

Parliament has been given the power, by passing a law, to admit into the Union new States or to establish new States on such terms and conditions as it thinks fit. Once they are admitted as States, their names will be added to the First Schedule and they will be entitled to all the status and privileges to which States specified in that Schedule are entitled.

FORMATION OF NEW STATES. Parliament has also been given the power, by passing a law, to (*a*) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of a State, (*b*) increase the area of any State, (*c*) diminish the area of any State, (*d*) alter the boundaries of any State, and (*e*) alter the name of any State. In the exercise of this power a separate State called Andhra was created out of Madras State territory in 1953.

But the following conditions must be fulfilled before such a step could be taken. Firstly, no Bill for the purpose shall be introduced except on the recommendation of the President; secondly, where the proposals contained in the Bill affect the boundaries or the names of States specified in Part A and B of the First Schedule, the views of the legislatures of the affected States both in regard to the introduction of the Bill and also in regard to the proposed changes must be previously ascertained by the President.

The power to bring about a territorial rearrangement of the existing States is thus rightly vested in the Centre as represented by the President and Parliament.

In view of the insistent demand for a regrouping of States on a linguistic basis this position is interesting. Whatever may be the urgency of the problem felt by inhabitants of multi-lingual States, nothing can be achieved by them unless the President, that is, the Central Ministry, is persuaded to recommend the necessary legislation and unless Parliament is persuaded to pass it. As Parliament itself contains a substantial proportion of representatives coming from uni-lingual States of North India, it may not, as a whole, feel the urgency of the problem with the same degree of intensity that may be felt by people of the multi-lingual areas of peninsular India. It will also be seen that the views of the legislatures (and through them of the people) of the States affected by the proposed changes have only to be ascertained; they may or may not be accepted by Parliament. It is, therefore, not inconceivable that changes may be brought about by parliamentary legislation even in direct opposition to the opinions of the parties interested and affected.

These changes in the geographical set-up of the States which Parliament is empowered to make by ordinary law are not to be considered as amendments of the Constitution. They will not be required to pass through that more elaborate legislative procedure which is prescribed for constitutional amendment. Consequential changes in the First and Fourth Schedules (which give the lists of States and their status) will be made by the ordinary law.

Citizenship

Importance of Citizenship. Citizenship is one of the

essential concepts of political theory, particularly in modern democratic times. It implies not only the physical fact of residence within a particular territory but a fundamental attachment and allegiance to that territory and to the traditions and culture of the corporate life that it embodies. All those who reside within the area of a State are not necessarily its citizens. Foreigners may be living there for business, trade, professions or study; the growth of international contacts in modern times has naturally increased the number of such foreigners in every country. Even those foreigners who are settled for long periods of time in a particular country are not automatically on that account considered to be its nationals. They have to declare their desire to be so recognized, and to satisfy the conditions that are prescribed as necessary for that purpose. The State and its citizens are organically related to each other; citizenship implies the consciousness of an inherent emotional and spiritual affinity between them. The State creates certain rights and obligations which every citizen necessarily carries with him as long as he continues to be a citizen. The rights enable him to control and direct the affairs of the State; the obligations impose duties and responsibilities on him for the purpose of safeguarding its existence and active functioning. Certain minimum rights like security of life and property are allowed to be enjoyed even by temporary residents, who are also bound to obey the criminal law of the country in which they reside. But direct participation in the activities of the State by the exercise of franchise, standing for elections, holding offices, etc., is a privilege reserved only for citizens; they have also to shoulder the responsibility of its defence and preservation. Citizenship is acquired on the basis of birth or descent, and also by fulfilling other specific conditions such

as residence which a State may lay down in that behalf. Modern Constitutions prescribe various qualifications to regulate its acquisition and possession. Care is usually taken to see that it is not made unduly cheap. In some countries the law is so designed as to exclude the coloured races of the world from being entitled to the rights and responsibilities of their full-fledged citizenship.

The Indian Constitution does not lay down laws and regulations of citizenship of a permanent character. That power has been left to Parliament which may frame a comprehensive law on the subject after detailed consideration at a later stage. What the Constitution does is to define the classes of persons who will be considered to be citizens at the time of its commencement and who will continue to be so, subject to any provisions that may be contained in subsequent Parliamentary laws on the subject.

CITIZENS AT THE COMMENCEMENT OF THE CONSTITUTION. The following persons were considered to be citizens of India on the day on which the Constitution began functioning: (*a*) a person born as well as domiciled in the territory of India, (*b*) a person not born but domiciled in the territory of India, either of whose parents was born in the same territory, (*c*) a person who, or whose father, was not born in India but who had his domicile in India and who had been ordinarily residing within the territory of India for not less than five years immediately preceding the commencement of the Constitution, (*d*) a person who had migrated to India from Pakistan, provided he or either of his parents or any of his grandparents was born in India as it was before the partition; if such a person had migrated before 19 July 1948 and had thereafter ordinarily resided within the territory of India, he became a citizen without any further formality; if he had migrated

after 19 July 1948 he had to get himself registered as a citizen of India by an officer appointed for that purpose by the Government of India on an application made by the person concerned to such an officer before the commencement of the Constitution; the applicant must have been resident in the territory of India for at least six months immediately preceding the date of his application.

Persons who migrated after 1 March 1947 from the territory of India to the territory included in Pakistan are not to be deemed to be citizens of India; however, if any such person had returned to India under a permit for resettlement or permanent return issued by the proper authority he was deemed to have migrated to India after 19 July 1948.

In the case of persons who, or whose parents or whose grandparents, were born in India but who are residing outside India it is laid down that they will be deemed to be citizens of India if they have been registered as such citizens by the diplomatic or consular representative of India in the country where they are residing; such registration will be made only on an application from the citizen.

No person who has voluntarily acquired the citizenship of any foreign State shall remain a citizen of India.

PARLIAMENT EMPOWERED TO MAKE LAWS. Parliament has been given the power to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship. Until Parliament makes any law in this connexion every person who was considered to be a citizen of India at the commencement of the Constitution shall continue to be such a citizen. In exercise of the power thus conferred upon it, Parliament passed in 1955 a comprehensive law for the definition and regulation of Indian citizenship.

No Dual Citizenship. It must be noted that though India has now become a Federation with autonomous constituent units there is no dual citizenship envisaged by the Constitution. There is only one citizenship for the whole of India. In the U.S.A. every State has its own citizenship and has the right to grant to its citizens a number of privileges which it may legally deny to others, even though they may be citizens of the U.S.A. No State of the Indian Federation possesses this right. Every Indian has the same rights of citizenship whichever may be the State or part of India in which he resides.

3

FUNDAMENTAL RIGHTS

A Check on the Coercive Power of the State. The problem of all government, in fact of human civilization, is the reconciliation of law and liberty, of authority and freedom. Even a popular democracy is confronted with the contradiction between the rights of the individual and the security of the State. If the possession and exercise of coercive power is inevitable for the preservation of ordered society and therefore of the individual who is its integral unit, the possibility of the abuse and excess of that power at the hands of those who are privileged to wield it is also inevitable. Attempts are made by modern Constitutions to eliminate or at least to minimize the evil consequences of this possibility to a great extent by defining certain rights as fundamental and not liable to be modified or diminished by the ordinary legislative process. They are not to be at the mercy of the shifting opinions and caprices of transient numerical majorities in the legislature. These rights are assured to all citizens—and many of them even to non-citizen residents—and their enjoyment is safeguarded by the Constitution vesting the power to enforce them in Courts of Justice which are independent of the executive, and to a great extent, of the legislature. In an unwritten constitution like that of England which is a product of continuous growth, and not of a single deliberate enactment, there is no specific enunciation of fundamental rights. There is no differentiation between ordinary law and law to amend the Constitution. Yet

the evolution of British polity is based essentially on and flows out of those principles which underline the definition of such rights.

NECESSARY EVEN IN A DEMOCRACY. The assurance of fundamental rights is considered necessary even in a democracy which is supposed to be the rule of the people, because in this system of government decisions are ultimately taken and authority is exercised by the opinions and impulses of the majority, and the minority has to submit to them. It is generally agreed that mere counting of heads is not necessarily an infallible guide for the assessment of ability and for the assurance of fair play and justice. It may be that, infatuated by a sense of profound self-esteem and of self-righteousness and by a consciousness of power which springs from the strength of numbers, the majority may make, wittingly or unwittingly, serious encroachments on the legitimate freedom of the individual, particularly on the freedom of those who differ from them. A great danger to democracy lies in the fact that it may tend to be misunderstood and misconstrued as being essentially the rule of numbers, whereas the emphasis should really be on rule by argument, persuasion and consent. The guarantee of fundamental rights is conceived more or less as an effective shield against the waywardness, intolerance and oppressiveness of Parliaments and governments, at least in normal circumstances. It is a means to secure the fullest opportunity to the minority to convert the majority to its viewpoint.

PROTECTION AGAINST THE LEGISLATURE. The elucidation of this objective has a particular relevance in the context of the controversy that was roused when some amendments to the Constitution were enacted in June

1951.[1] It is not necessary to discuss here the merits or demerits of the contents of the amendments, or to express any opinion on them. But the theoretical aspect of the question does require some consideration. The right to freedom originally guaranteed by the Constitution carried with it certain restrictions, and the amendments increased their scope by the addition of the words 'friendly relations with foreign States', 'public order' and 'incitement to an offence' to the saving clause which permits the legislature to pass restrictive laws in the interest of the subjects mentioned in the clause. It was contended by those who strongly opposed the amendment that the new items are so widely worded and are so comprehensive in their connotation that they could drastically abridge the freedom that is supposed to have been guaranteed by the fundamental rights. The reply to this criticism was that it was entirely misconceived and misdirected because the amendment by itself did not actually curtail any freedom; it was only an enabling measure which would enable the legislature, if and when that body so desired, to pass legislation imposing limitations on freedom for the purposes covered by the additional items.

Speaking from the point of view of constitutional theory, it is precisely on an issue like this that the crucial test has occasion to be applied. Fundamental rights, as distinguished from other rights, are clearly intended to safeguard the citizen as much against the excesses even of elected legislatures as against those of any other authority. As is often pointed out by political writers, the ephemeral numerical majorities in these chambers may sometimes allow themselves to be carried away by partisan passions and animosities, and unjustifiably penalize the freedom of expression

[1] The Constitution (First Amendment) Act, 1951.

and of association of those to whom they are opposed and whom they may be tempted to suppress. A right which is significantly described as 'fundamental' is intended to prevent exactly this tendency to suppression which may be displayed by the majority; that is the only *raison d'être* of fundamental rights. If an enabling measure enables the legislature to make inroads into a sphere which ought to be immune from its interference, then such a measure would undoubtedly be inconsistent with the ideal which inspires the formulation of fundamental rights and their inclusion in the Constitution. Whether the amendment referred to above does actually make or contemplate such an inroad or not is a matter for opinion. The assurance that a particular Government does not even remotely intend to utilize this power for the purpose of depriving the citizen of his freedom is merely the expression of an individual policy in regard to operational detail. It cannot take the place of a constitutional guarantee because it cannot have any permanent validity.

RESTRICTIONS ON FREEDOM ESSENTIAL. On the other hand, it is equally necessary to emphasize that in human society no right, not even a fundamental right, can be absolute and unrestricted. The interest of the country and the community as a whole must finally prevail and what that interest is must be left to be determined in the last instance by the majority of the people, irrespective of whether they are right or wrong. There is no other more feasible mechanism to settle disputed issues. That explains the supreme importance of an elected legislature in the working of democracy. Every kind of liberty in social life, whether of expression, association or action, must ultimately have one governing limitation, namely, the preservation of society and also its continued progress.

Liberty for one must not mean loss of liberty to another and destruction to all. Freedom to indulge in anti-social activities will be equivalent to a licence to disrupt society and destroy man. The proper definition of fundamental rights is, therefore, as difficult as a rope dance. Excessive limitations will negative them; on the other hand, a total absence of limitations will, by bringing about chaotic conditions, also produce the same result. The Constitution of the U.S.A. did not expressly impose any limitations on some of the fundamental rights, such as free speech. Experience showed that it was a dangerous lacuna. And the Courts of Law while interpreting the Constitution developed the doctrine of what is known as the 'police power' which inheres in every State, and by the exercise of which, restrictions on freedom which are deemed necessary for the very existence of the nation are legitimately imposed. Our Constitution-makers, benefiting by the example of the U.S.A., have specified, along with the rights, the restrictions imposed on them. This creates the curious spectacle of the left hand apparently taking away what the right hand has given, of freedom being compelled to carry as a companion its own antidote. But in the nature of things, such a paradox is woven in the very concept and fabric of social life. Unrestricted freedom would amount to anarchy. Of course, the greatest care has to be taken to see that the exercise of restrictive powers either by the executive or by the legislature is subject to correction by an independent judicature.

The Indian Constitution enumerates the following seven categories of fundamental rights; the seventh category gives the right to constitutional remedies for the enforcement of the rights mentioned in the first six categories.

1. *Right to Equality.*[1] (*a*) The State shall not deny to any person equality before the law or the equal protection of the law. This does not mean that all persons will have an absolute equality and identity of position or status. For instance, Presidents, ambassadors, judges will have a special status and privileges appertaining to their office. Officers of Government will also have powers that an ordinary citizen will not possess. But these powers will be derived from law and their abuse will be punishable by courts. What is meant is, in the words of Jennings, 'that among equals the law should be equal and should be equally administered, that like should be treated alike'.

(*b*) Article 15 and its Amendment. The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth; nor will any citizen be subject to any disability on any one of the above grounds in regard to access to shops, hotels, places of public entertainment or the use of wells, tanks, ghats, roads and other public places maintained wholly or partly out of State funds. Special provisions may, however, be made for women and children. The State may also make special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. This last proviso was added by the Amendment made in June 1951 in order to remedy the situation created by a judgement of the Madras High Court. The Madras Government had issued an order making reservations for certain classes and communities in respect of admission to its educational institutions. The High Court held that these orders were inconsistent with Article 15 and Article 29 of the Constitution, and were, therefore, void. It was felt that this

[1] Articles 14-18 as amended by the Amendment Act, 1951.

decision would hamper the efforts made for raising the level of backward communities who had suffered in the past from lack of opportunity and who therefore require a special pull in the upward direction. It is not unlikely that the giving of special facilities for backward classes may tend to degenerate into a perpetuation of caste and community distinctions and the creation of new vested interests; yet their denial would also be a serious impediment in the achievement of that ideal of social equality and national unity which every civilized society envisages. The risk has, therefore, to be taken in the hope that the power of granting special facilities will not be abused in such a way as would create new handicaps for any other sections of society.

2. *Right to Freedom and Amendment of Article* 19(2).[1] (*a*) All citizens shall have the right to: (i) freedom of speech and expression; subject however to the limitation (as enlarged by the Amendment Act; the Constitution had originally mentioned only libel, slander, defamation, contempt of court, decency, morality, undermining the security of or tending to overthrow the State) that the State can make any law imposing reasonable restrictions on the exercise of this right in the interest of the security or the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation, or incitement to an offence. It was argued when the amendment was under discussion that these expressions are very elastic and that even peaceful agitation vigorously conducted against the Government may come within the purview of any inhibitory action taken in their behalf. However, in this connexion the adjective 'reasonable' cannot be over-

[1] Articles 19-24 as amended by the Amendment Act, 1951.

looked: what is reasonable and what is not will have ultimately to be decided by the judiciary and that will be a healthy check on the power of the legislature. (ii) Assemble peaceably and without arms: subject to the limitation that reasonable restrictions can be imposed by law on the exercise of this right in the interest of public order; it will be noted that no armed gathering is included within the purview of this right. (iii) Form associations or unions: subject to the limitation that reasonable restrictions can be imposed on this right in the interest of public order or morality; organizations formed for criminal or immoral purposes cannot take shelter behind this right. (iv), (v), (vi) Move freely throughout the territory of India: reside and settle in any part of the territory of India; acquire, hold and dispose of property; all subject to the limitation that reasonable restrictions can be imposed by law on these rights either in the interest of the general public or for the protection of the interest of any Scheduled Tribe. (vii) Practise any profession or carry on any occupation, trade or business; subject to the limitation that the State may make any law relating to (i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business or (ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise. This latter clause was added by the Amending Act to remove all doubts about the validity of any action by the State in the nature of starting or regulating industrial or commercial ventures.

(*b*) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the offence nor shall any person be compelled

to be a witness against himself. No retrospective punishment is, therefore, possible.

(*c*) No person shall be deprived of his life or personal liberty except according to procedure established by law. SIGNIFICANCE OF THE EXPRESSION 'PROCEDURE ESTABLISHED BY LAW'. It would be interesting, because of its constitutional significance, to refer here briefly to the discussion that took place in the Constituent Assembly on the desirability of substituting the words 'without due process of law' which are used in the American Constitution for the words 'in accordance with procedure established by law'. The difference between the two positions is easy to understand. 'Procedure established by law' clearly implies two things: firstly, that the procedure will be precisely defined, and secondly, that the law which will define it will be passed by the legislature, that is, by its majority vote. On the other hand, the mere use of the words 'due process of law' does not prescribe any definite procedure; it only indicates in a general way such forms and rules of the legal process the observance of which will ensure a fair trial and impartial justice. It is left to the judges to decide what is 'due process' and what is not. A very considerable scope is therefore left for the exercise of the judges' discretion, and their personal likes and dislikes may materially affect their interpretation. The American Constitution has used the words 'due process of law' and the rulings on the point given by the Supreme Court have varied from judge to judge, from time to time and from case to case. There has been no uniformity or consistency about the rulings.

Dr Ambedkar pointed out in the Constituent Assembly that the difference in the language of the two clauses raises

the important issue of the relationship between the legislature and the judiciary. In a federal constitution which clearly demarcates the legislative spheres of the Centre and the States, the Supreme Court has the power to sit in judgement upon the validity of a law passed by the Central or State legislature because it is the final authority to decide whether or not the passing of law was within the competence of the legislature. If in the opinion of the Court the legislature exceeded its authority in passing the measure it would be declared to be *ultra vires* and therefore null and void. To this power of the Supreme Court a further addition will be made if the words 'due process' were introduced. These words will have to be interpreted at every time of their application and the responsibility to do so is cast on the judges. They will naturally go by their own inclinations and by the yardstick of what appear to them to be certain fundamental principles of natural justice. A law which in their opinion violates these principles would be set aside by them. Such a contingency does not arise in case the other alternative clause is adopted because the legislature will specifically lay down the procedure and nothing is left to interpretation.

The question, therefore, arises as to who should have the decisive voice in this respect, the legislature or the judiciary. There are dangers inherent in both the situations. A legislature may normally be trusted to respect the spirit of the Constitution and pass a suitable law for prescribing the procedure. Yet it may sometimes happen that there is a lapse on its part. Packed by a regimented majority of party men and goaded by party passions and prejudices, it may be led into passing a law which may be contrary to the spirit of the Constitution and which

will have the effect of abrogating and nullifying one or more of the fundamental rights that are guaranteed by it to a citizen. On the other hand, if the final discretion is left to the judiciary it will mean that the judges are given the authority to sit in judgment upon the will of the legislature, that is, of the people, and to reject a law, not because it is beyond the competence of the legislature to pass it but because in the view of the judges the law is not intrinsically good and proper. Is it desirable or fair to allow half a dozen men, however eminent and able, sitting as judges, to examine laws passed by an elected legislature and to determine in accordance with their own conscience or personal bias and prejudices which law is good and which is bad? The balance of consideration would appear, on the whole, to lie in favour of regarding a representative legislature as a more competent body, and the Constituent Assembly ultimately accepted that clause which implies the supremacy of the legislature.

(*d*) No person who is arrested under the ordinary law shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest; he shall not be denied the right to consult and to be defended by a legal practitioner of his choice; he shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate, and no such person shall be detained in custody beyond the said period without the authority of the magistrate.

This privilege is however not extended to any person who for the time being is an enemy alien, or to any person who is arrested or detained under any law

providing for preventive detention.

PREVENTIVE DETENTION. The following limitations have been put upon any law providing for preventive detention, that is, detention without trial: (i) Government may ordinarily detain a person in custody only for three months; but Parliament has the power to make a general law laying down in what classes of cases a person may be detained for a period longer than three months, (ii) apart from such law of Parliament, Government will be entitled to detain a person beyond three months only if it obtains the report of an Advisory Board consisting of persons who are qualified to be Judges of a High Court that there is in its opinion sufficient cause for such longer detention; however, no person can be detained beyond the maximum period prescribed by the law made by Parliament, (iii) the authority making the detention must, as soon as may be, communicate to the detenu the grounds of his detention and afford him the earliest opportunity of making a representation against the order; however, the authority making the order may not be required to disclose facts if in the opinion of the authority such a disclosure would be against public interest.

The law for preventive detention which Parliament may make must prescribe (*a*) the procedure to be followed by an Advisory Board when it is called upon to make an inquiry into the case of a detenu, (*b*) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months without obtaining the opinion of an Advisory Board, (*c*) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention. This

will ensure that no person under any circumstances can be detained without trial for an indefinite period.

Preventive detention is considered necessary in the interest of the security of the State in cases where it may not be easy to make a legal charge against a person suspected of anti-social and anti-national activities and to secure his conviction by a legal proof in a judicial court. Its object is to prevent possible mischief which in the opinion of the authorities the suspected person or persons are likely to perpetrate against the State with grave consequences. It will generally apply in cases of defence, foreign affairs, security of India or of a State, maintenance of public order or of supplies and services essential to the community.

3. *Right against Exploitation.* (*a*) Traffic in human beings and *begar*, that is, involuntary work without payment, and similar other forms of forced labour are prohibited; contravention of this provision will be an offence punishable in accordance with law. This article, however, shall not prevent the State from imposing compulsory service for public purposes, as for example, compulsory military service or obligation to serve as jurors; but in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class.

(*b*) No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

4. *Right to Freedom of Religion.* (*a*) All persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion; this right is, however, subject to public order, morality and health and to the other fundamental rights mentioned in the

Constitution. This freedom also will not affect the operation of any existing law, or prevent the State from making any law for (i) regulating or restricting any economic, financial, political or other secular activities which may be associated with religious practice, and (ii) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus. The wearing and carrying of *kirpans* shall be deemed to be included in the profession of the Sikh religion, and the expression Hindus shall include persons professing the Sikh, Jain or Buddhist religion.

(*b*) Subject to public order, morality and health every religious denomination shall have the right to establish and maintain institutions for religious and charitable purposes, to manage its own affairs in matters of religion, to own and acquire moveable and immoveable property and to administer such property in accordance with law.

(*c*) No person shall be compelled to pay any taxes, the proceeds of which are to be specifically utilized for the promotion or maintenance of any particular religion or religious denominations.

(*d*) No religious instruction shall be provided in any educational institutions wholly maintained out of State funds; however, such instruction may be provided by an institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution. No person attending any educational institution recognized by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such an institution or to attend any religious worship that may be conducted in it unless such

a person or, if he is a minor, his guardian has given his consent to do so.

CLARIFICATION OF THE LIMITATION ON THIS RIGHT. As has been stated earlier, according to the secular principle the State as a political organization is concerned with the social and material relationship between man and man and is not concerned with what is considered to be man's relationship with that mysterious power which is known as God. The latter is purely a matter of personal faith and conscience. The State as such has no religion and cannot show any discrimination either in favour of or against a particular religion. The freedom embodied in the above right is therefore quite appropriate. But the limitations put on it make it clear that this freedom cannot be abused by being utilized to override the interests of the peace and order of society or to offend its moral standards and sensibilities.

Indeed, the difficulty about this freedom arises from the fact that religion is very closely mixed up with the social life of the people. It is, therefore, necessary to disentangle the essentials of a religion from the mass of customs and practices which envelop them and which often tend to parody the basic conceptions of a good life, and even become an antithesis of social justice and morality. For example, practices such as that of *sati* or other forms of human sacrifice, of untouchability, of imposing different kinds of disabilities on women, of early marriages, bigamy, dedication of *dev-dasis*, regarding people of other religions as kaffirs or heathens, . which are palpably abhorrent to the social conscience, cannot be tolerated even if they are supposed to be sanctified by religion. They will come within the purview of State regulations and may be totally abolished by law. The

forces of social, economic and political reform cannot be held back by the dogmas of so-called religions. Nor could the security and the tranquillity of a State be allowed to be jeopardized by the pursuit of so-called religious principles. No subversive activities can be carried on in the name of religion nor can it be turned into an instrument for sabotaging progress and fossilizing society. The introduction of a uniform Civil Procedure Code and personal law applicable to all citizens of the country irrespective of their religion and based upon generally accepted notions of propriety, fairness, justice and morality in contemporary times cannot be objected to on the ground that it would be an invasion on the existing religious rights of particular persons or communities.

5. *Cultural and Educational Rights.* (*a*) Any section of the citizens residing in the territory of India having a distinct language, script or culture of its own shall have the right to conserve the same. No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds of religion, race, caste, or language. The Amendment Act of 1951, however, made it clear that the State may make any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. Reservations in respect of admission can, therefore, be made for them. A reference has already been made to the Madras High Court judgement which necessitated the amendment.

(*b*) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice; the State shall not, in granting aid, discriminate against any educational

institution on the ground that it is under the management of a minority, whether based on religion or language. These are healthy provisions to secure cultural protection to linguistic minorities and are particularly valuable in a vast country like India with its multiplicity of languages and perfect freedom of movement and settlement in any part of the country.

6. *Right to Property and Amendment of Article* 31.[1] No person shall be deprived of his property except by the authority of law. No property, moveable or immoveable, including commercial or industrial undertakings, shall be taken possession of or acquired for public purposes unless the law provides for compensation and either fixes the amount of the compensation or specifies the principles and the manner of its determination. Such law for the acquisition of property made by any State will not have effect unless it has received the President's assent. This right will not, however, prevent a State from making a law for the purpose of imposing or levying any tax or penalty or for the promotion of public health or the prevention of danger to life or property or for fulfilling obligations in regard to what is declared to be evacuee property. Any law of a State enacted not more than eighteen months before the commencement of the Constitution may be submitted within three months from such commencement to the President for his certification; and if the President then certifies it such law will be valid and not be called in question because it contravenes this particular right.

In pursuance of their policy of introducing economic and social reform, several States passed laws for the abolition of zamindari and for the regulation of relation-

[1] Article 31 as amended by the Amendment Act of 1951.

ship between proprietor and tenant. But some of these laws became the subject matter of litigation because their validity was questioned on the ground that they were inconsistent with the right to property guaranteed by the Constitution. It was never intended that this right should be allowed to impede social and economic progress, and therefore the Amendment Act introduced two new clauses clarifying the position. (*a*) It was made clear that no law providing for the acquisition by the State of any estate or of any rights therein or for the extinguishment or modification of any such rights shall be deemed to be void on the ground that it is inconsistent with the provisions of the Constitution; but such law, having been reserved for the consideration of the President, must have received his assent. (*b*) To further remove all possible doubts, a new Schedule, called the Ninth Schedule, was added to the Constitution enumerating the particular laws that were passed by the different States on the subject and that were not to be affected by any provision of the Constitution or any judgement or order of any court or tribunal to the contrary.

It was, however, found that even this clarification was not enough to cover all cases in which Government thought it necessary to interfere in the public interest. For example, there were grave allegations and complaints about the affairs of the Sholapur Mill and Government took over the management of the mill, a special law being passed to enable it to do so. It was contended that such a law and action taken in pursuance of it contravened the Fundamental Right in regard to Property guaranteed by the Constitution. The case was taken to the Supreme Court which upheld the contention, giving a very wide meaning to clauses (1) and (2) of Article 31

of the Constitution. The judges held that deprivation of property did not merely mean the State actually acquiring or taking possession of proprietary rights; it also meant any curtailment of those rights even when such curtailment is caused by a purely regulatory or prohibitory provision of the law. Thus, though the ownership of the Sholapur Mill was not transferred to Government the fact that its management was taken over by it was considered to be an encroachment on proprietary rights.

The consequences of such a decision by the Supreme Court were bound to be far-reaching because it could be interpreted to apply in several similar cases. For example, legislation controlling house rents in urban areas or controlling conditions of agricultural tenancy has been passed by several State legislatures. It could be argued that such restrictions constituted an encroachment on proprietary rights and that therefore owners of houses and lands were entitled to compensation for this curtailment of their rights. It will be seen that in such cases—and there will be several others—there is no question of the State desiring to acquire rights of ownership; it is merely desirous of regulating or prohibiting, in the public interest, certain practices.

The Constitution was therefore further amended in 1955.[1] The amendment made the position clear by providing, in effect, that no compensation will be necessary in cases where a person may be said to be deprived of his property because restrictions or regulations have been placed on its use in the public interest, even though there is no transfer of ownership or right to possession of that property to the State or to a corporation owned or controlled by the State.

[1] The Constitution (Fourth Amendment) Act, 1955.

Another important change effected by the Amending Act was in respect of the determination of compensation. Article 31 as it originally stood laid down that compensation shall be paid for all property acquired and that the amount of compensation or the principles on which it was to be determined shall be decided by law passed by the relevant legislature. However, if it was felt by a party affected by such law that the compensation awarded was not fair or reasonable, the case could be taken to the Supreme Court which could then sit in judgement upon the law and give its own decision which would be binding on all.

The Amendment of 1955 has added a new clause to the article to take away the jurisdiction of the Supreme Court in this respect. It lays down that no such law should be called in question in any court on the ground that the compensation provided by that law is not adequate. There could, therefore, be no litigation on this issue.

The inclusion of this clause was severely criticized by a few responsible jurists and politicians. They pointed out that the very purpose of incorporating justiciable Fundamental Rights in a democratic constitution is to provide an effective guarantee against the despotic indulgences not only of governments but also of popularly elected legislatures where ultimate decisions are taken by a majority. The withdrawal from the jurisdiction of the Supreme Court of such a vital matter as compensation is to give an opportunity to the legislature—that is, its majority—to impose injustice, if not expropriation or confiscation, in a perfectly legal and constitutional manner.

The reply to this criticism was that the critics overlooked the dynamics and the tempo of the new social

forces that have been set in operation to shape India's destiny. The acceptance of the ideal of socialism and of the establishment of an egalitarian society in which the difference between the haves and the have-nots will be reduced to the minimum, and the adoption of the method of democratic planning to achieve this end, necessarily invest the elected legislatures with supreme importance. It may be that they may sometimes err. But it is a lesser risk to trust to their collective good sense than to allow the possibility of national progress being hampered by vested interests. With enormous schemes of 'social engineering' either actually in hand or in contemplation, at least in this respect the supremacy of the popular will, that is, of the elected legislature, must be conceded.

Certain constitutional difficulties were experienced by the Union and State Governments in putting through important social welfare legislation on the desired lines. The Amending Act, therefore, added some more clauses to Article 31A and some more entries to the Ninth Schedule of the Constitution. Article 31A became, after the additions, much more comprehensive and now includes items like acquisition by the State of any estate or of any rights therein, or the extinguishment of those rights; taking over the management of any property; amalgamation of two or more corporations; extinguishment or modification of any rights of managing agents, secretaries, treasurers, directors, managers of corporations; extinguishment or modification of any rights accruing by virtue of any agreement, lease, licence, etc., for searching for or winning mineral oil or any mineral.

If a law pertaining to any of these items is passed it will not be deemed to be void on the ground that it is inconsistent with any of the Fundamental Rights; but if

such a law is passed by any of the State legislatures it shall be valid only after it receives the assent of the President.

7. *Right to Constitutional Remedies.*[1] (*a*) The right to move the Supreme Court by appropriate proceedings for the enforcement of these fundamental rights is guaranteed by the Constitution. The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, for the enforcement of any of these rights.[2] In addition to the powers conferred on the Supreme Court, Parliament may by law empower any other court to exercise within its jurisdiction all or any of the powers exercisable by the Supreme Court. This right shall not be suspended except as otherwise provided for by the Constitution.

(*b*) Parliament may by law determine to what extent any of the fundamental rights shall be restricted or abrogated when they are applied to members of the Armed Forces so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

[1] Article 32.

[2] HABEAS CORPUS is a celebrated constitutional privilege. This writ is issuable by the court to any authority and commands the production before the court of any person who has been detained by the authority. The court makes an inquiry into the cause of his imprisonment and if it is satisfied that there is no legal justification for detention the person is ordered to be released. Illegal detention and imprisonment without trial are thus prevented.

MANDAMUS is a peremptory order issued by the court and commanding a person or a body of persons to do their legal duty. PROHIBITION is a writ issued for the purpose of preventing an inferior authority from exceeding its jurisdiction or from acting contrary to the principles of natural justice. CERTIORARI is a writ which requires that the record of the proceedings of a case pending before an inferior court should be transmitted to the superior court for being dealt with by the latter. QUO WARRANTO is an injunction restraining a person from acting in any public office to which he is not entitled.

(*c*) Parliament may by law indemnify any person in the service of the Union or of a State in respect of any act done by him for the maintenance or restoration of order in any area where martial law was in force; it may also validate any sentence, punishment or forfeiture ordered under martial law in that area.

IMPORTANCE OF THIS RIGHT. These are very important provisions of the Constitution because they make the fundamental rights justiciable. A mere declaration of rights has no value whatsoever unless their enforcement is guaranteed by judicial remedies. Any citizen who feels that there has been an encroachment on his rights either by the action of the executive or of the legislature must have the opportunity of taking his complaint to an impartial superior authority whose decisions are binding on all the parties concerned. The Supreme Court as the highest judicial tribunal of the land is invested with the power to hear all such complaints of executive or legislative invasions on what have been described by the Constitution as the fundamental rights of the citizen and it is this power given to the Court which will make the rights a living reality and a tangible asset of immense value.

Dr Ambedkar pointed out in the Constituent Assembly that the importance of the various writs which the Supreme Court is empowered to issue 'lies in the fact that they are prerogative writs; they can be sought for by an aggrieved party without bringing any proceedings or a suit. The object of the writ is to grant what may be called interim relief. For instance, if a person is arrested, without filing a suit or a proceeding against the officer who arrests him, he can file a petition to the Court for setting him at liberty. In a proceeding of this kind

all that the Court can do is to ascertain whether the arrest is in accordance with law. The Court at that stage will not enter into the question whether the law is a good law or a bad law.'

It was also pointed out that these writs had existed even under the old laws before the new Constitution became operative. But they were then entirely at the mercy of the legislature which had power to amend and even to abolish the laws which embodied them. Now the situation has changed. The incorporation of these writs in the Constitution itself has made it impossible for the legislatures of the land to take them away by the ordinary legislative process. The Constitution will have to be amended for that purpose. This is one of the greatest safeguards for the safety and the security of the individual.

SUSPENSION OF FUNDAMENTAL RIGHTS. It will be noticed that even these rights are liable to be suspended under conditions of grave emergency which threaten the very existence of the State. The Constitution provides for such a contingency. It is laid down that while a Proclamation of Emergency issued by the President is in operation, the State will have power to make any law or to take any executive action in spite of the existence of the fundamental right to freedom. Similarly, when such a Proclamation is in operation, the President may by order declare that the right to move any court for the enforcement of fundamental rights shall remain suspended during the currency of the Proclamation or for a shorter period. The exercise of the rights in normal peaceful times is essential to enable an individual to develop his personality and to elevate himself to the heights of which he is capable. But when the State itself

is in peril it must have the power to take all necessary steps to preserve itself. No individual can live if there is no State. The right of the State in this matter must take precedence over the right of the individual in the interest of the safety and the security of the individual himself.

When martial law is in force the ordinary law stands suspended. It is only in circumstances of grave difficulties that martial law is resorted to for the restoration of peace and order and suppression of rebellious forces. Persons who are charged with the performance of such duties must have some sort of assurance that they would be indemnified from the penal consequences of the actions that they may be required to take. Otherwise they may not be willing to take all the necessary steps to save the affected areas from the dangerous situation in which they may have been placed. Parliament has been given the power to pass such indemnifying laws if necessary.

The Constitution lays down that Parliament alone and not the legislatures of the States will have power to make laws to give effect to any fundamental right and to prescribe punishment for those acts which are declared to be offences against the rights. This will ensure uniformity in regard to the content of the fundamental rights and also in regard to the punishment for their infringement throughout the country.

WIDE DEFINITION OF THE WORD STATE. In connexion with the enforcement of fundamental rights, whenever and wherever the word State is used it is expressly stated to include the Government and Parliament of India and the Government and the legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India. This is a very comprehensive definition and will make

the rights binding upon municipalities, district boards, port trusts, village panchayats and in fact upon every authority which has power to make laws.

It is declared that all laws in force in the territory of India before the commencement of the Constitution, in so far as they are inconsistent with the fundamental rights shall, to the extent of such inconsistency, be void. The word law includes any ordinance, order, by-law, rule, regulation, notification, custom, or usage having in the territory of India the force of law. However, the Amendment Act of 1951 laid down that no law in force in the territory of India before the commencement of the Constitution pertaining to restrictions on the freedom of the individual which is consistent with the provisions of the fundamental right to freedom as defined in the Constitution after the amendment shall be deemed to be void, or ever to have become void, on the ground only that it takes away or abridges the right. The amendment, therefore, will have retrospective effect from the commencement of the Constitution and the vacuum that may have been created by the pronouncements of any court declaring any of the existing laws to be null and void because they were inconsistent with the provisions of the Constitution has thus been remedied and removed. Similarly, the first of the two new clauses added to the Article conferring the right to property, and which have been mentioned above, is deemed always to have been inserted, that is, it will have retrospective effect from the commencement of the Constitution.

4

DIRECTIVE PRINCIPLES OF STATE POLICY

THE MODERN STATE IS A WELFARE STATE. The modern State does not embody only a political or police concept. It is rather looked upon as a powerful instrument for removing social injustice, eliminating artificial inequalities and bringing about the moral and material uplift of all the members of the community. Today, mere political democracy is not considered to be enough though it is essential; it must signify and be accompanied by social and economic democracy which is equally vital for civilized human existence. In the present condition of society with its class distinctions and inequitable distribution of wealth, the poor man suffers from a denial of proper opportunities to grow to the fullest stature of which he is capable; he is subjected to handicaps and disabilities which are not of his making and which he does not deserve. The modern democratic State endeavours to remove this intolerable wrong and to prevent its further perpetration. It takes positive steps to create conditions of life where the socially, educationally and economically backward would get special facilities for improving their lot in a speedy and effective manner. Very comprehensive and expensive schemes of social security like the Beveridge Plan now operating in England are an illustration of the solicitude which the modern State displays in peacefully introducing revolutionary readjustments in social relationships and in the social and economic

structure. That is why it is called the Welfare State.

ENUNCIATION OF RIGHTS WHICH ARE NOT JUSTICIABLE. However, it is usually not possible to take legislative or executive action of such an obligatory nature and of such a comprehensive content that all the ideals of social and economic democracy could be realized at once. In a particular stage of its development it may be beyond the capacity of the State, with its inadequate resources, aptitudes and experience, to bear such a burden. For example, no State could wish that even a single able-bodied man should be the victim of an enforced unemployment and consequent misery and starvation; and yet no State, except perhaps in full-fledged communism, could give a legal guarantee that every one of its unemployed citizens shall be provided with a job. Similarly, a steep upgrading of general standards of health and nutrition or of education are cherished ideals; yet they do not lend themselves to precise legal definition and it will not be practicable to create them into legally enforceable rights under the Constitution. Here is, therefore, a category of the State's responsibilities which the State solemnly accepts as ideals to be striven for and to be achieved but the implementation of which, on account of the practical difficulties involved, cannot be made an obligation in the legal sense. The Constitution has distinguished such civic privileges from fundamental rights; unlike the latter they are not justiciable; they only enunciate certain essential directives which Governments must keep constantly in mind while framing their policies and programmes and carrying them in practice. But these injunctions, even though they are to be considered as 'fundamental in the governance of the country' confer no legal rights and provide no legal remedies.

It is argued by critics that from the point of view of the citizen, rights which are not legally enforceable and which have not therefore the certainty of being translated into reality are no rights at all; that public welfare as an ideal is inherent in the very concept of democracy and that its detailed elaboration which amounts to nothing more than the expression of a pious wish and of high-sounding moral precepts is superfluous if not pedantic. However, those who framed the Constitution were convinced that the elucidation of such rights and duties even as ideals has its own constitutional value. They clarify the very purpose of State activity and are intended to set the tone and pace to the machinery of Government for initiating the new social and economic order which they definitely visualize.

The following principles have therefore been mentioned:

(i) The State shall strive to promote the welfare of the people by securing and protecting a social order in which all the institutions of national life will be based on social, economic and political justice.

(ii) The State shall direct its policy towards securing that (*a*) all citizens, men and women, have the right to an adequate means of livelihood, (*b*) the ownership and control of the material resources of the community are so distributed as best to serve the common good, (*c*) the operation of the economic system does not result in the concentration of wealth and means of production so as to prove harmful to the common interest of the community, (*d*) there is equal pay for equal work for both men and women, (*e*) the health and strength of workers and the tender age of children are not abused and citizens are not forced by economic necessity to do a kind of

work which is not suited to their age or strength, (*f*) childhood and youth are protected against exploitation and against moral and material abandonment.

(iii) The State shall take steps to organize village panchayats so as to enable them to function as units of self-government.

(iv) The State shall, as far as its economic capacity will permit, make effective provision for securing the right to work, the right to education, and the right to public assistance in case of unemployment, old age, sickness, and disablement.

(v) The State shall make provision for securing just and humane conditions of work and for maternity relief.

(vi) The State shall endeavour to secure to all workers, agricultural, industrial or otherwise, work, a living wage, a decent standard of life and full enjoyment of leisure and social and cultural opportunities; cottage industries should be specially promoted.

(vii) The State shall endeavour to secure for all citizens a uniform Civil Code throughout the territory of India.

(viii) The State shall endeavour to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

(ix) The State shall promote with special care the educational and economic interest of the weaker sections of the people, and, in particular, of the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

(x) The State shall regard the raising of the level of nutrition and the standard of living of its people and improvement of public health as among its primary duties;

it shall endeavour to bring about prohibition of the consumption, except for medicinal purposes, of intoxicating drinks and of drugs which are injurious to health.

(xi) The State shall endeavour to organize agriculture and animal husbandry on modern and scientific lines; it shall take steps for preserving and improving the breeds of cows and other cattle and for prohibiting their slaughter.

(xii) It shall be the obligation of the State to protect every monument or place or object of artistic or historic interests declared by Parliament by law to be of national importance.

(xiii) The State shall take steps to separate the judiciary from the executive in the public services of the State.

(xiv) The State shall endeavour to (*a*) promote international peace and security, (*b*) maintain just and honourable relations between nations, (*c*) foster respect for international law and treaty obligations, (*d*) encourage settlement of international disputes by arbitration.

It is interesting to observe that those who advocate the policy of prohibition or of the prevention of cow slaughter or of giving special encouragement to small-scale industries, refer to the relevant clauses in the Directive Principles, and base their case on them. Similarly, one of the arguments in favour of the 4th Amendment to the Constitution (1955) was that its provisions were calculated to promote economic and social equality between the citizens of the country and that thereby it helped to abridge the distance between Directive Principles and Fundamental Rights.

5

DISTINCTION BETWEEN THE UNION AND STATES

NEED FOR ADMINISTRATIVE DIVISIONS. The territorial sub-division of a country for administrative purposes is a natural and universal phenomenon. Governmental authority inevitably becomes distributive in the process of its exercise, and agents of the Central Government, with sufficient powers and specified jurisdiction, are set up in convenient places to act on behalf of the Central authority and to carry out its mandate. After all, the arm of Government must reach the farthest corner of the land under its control and extend to all individuals who live within its limits. The origin, size and status of such divisions will depend upon circumstances and will vary according to the purposes which they are intended to serve. But even municipal and local board areas can be pointed out as illustrations of what are called administrative divisions.

India is a country of continental dimensions and it is obvious that the whole of its vast area cannot be effectively administered from one single centre however convenient its location. In ancient times Bharat was divided into different *Deshs* and *Pradeshs*, some of them sovereign, others under the loose control of some mighty emperor. In the days of Muslim rule there were Subhas and Subhedars under the emperors of Delhi. After the advent of the British power provinces of different types came to be formed in a very haphazard and accidental manner.

Whether in ancient, in medieval or in modern times, such subordinate territorial divisions are intended to be administrative units and are linked to the superior national authority by legally defined ties.

Use of the Term State. Under the new Constitution of independent India, what were known as provinces during the days of British rule are designated as States. The term is also applied to what were formerly called the Indian States and which have now beccome an integral part of the Indian Union. The designation State is considered to be more dignified and better expressive of the co-ordinate status of the constituent units in a federation than the word province which has about it rather an air of subordination. The names of the different States which composed the Indian Republic at the time of its inauguration on 26th January 1950 are given on page 164. A reference has also been made to the power vested in the Union to admit and to create new States. In the exercise of that power, the new State of Andhra consisting of the Telugu-speaking areas of the State of Madras was formed in 1953. Each State has a Government established in and for it. The jurisdiction of these Governments is strictly limited to the States sphere, as understood both in the geographical and in the political sense. The range and bounds of this sphere are definitely marked. All States stand on a level of equality in relation to each other and no one State is allowed to trespass upon the rights and interests of another. An administrative system more or less of the same pattern and embodying the same essentials is provided for every State, though there may be differences of detail to suit local conditions.

The Central Government. At the head of all the States stands the largest entity, known as the Government

of India or the Union Government. It has a distinct sphere of its own, and in several important matters its authority extends to the whole country. The subjects that it manages—for example, defence, customs, posts and telegraphs, railways, etc.,—have a vital bearing on all parts and people of the land. It is invested with wide powers of supervision and control, because it is intended to serve as the superior all-India authority. The Government of India, as the central Government of the country, personifies the unity of India, while the State Governments represent its diversity. The former deals with problems which concern the whole nation. The latter are placed in charge of subjects which can best be managed by the different parts. For clarity of exposition, it is convenient to separate the two entities and to describe each in detail. The links that connect them and help to co-ordinate their various activities have also to be properly grasped.

FORMATION OF PROVINCES UNDER BRITISH RULE. It is necessary to refer here to an important problem that is presented by the peculiar formation of several States, particularly in peninsular India, and to the urgent demand for a rearrangement of their areas and boundaries on rational lines. This, in fact, is an unhappy legacy of the British rule. India has always been composed of different linguistic units, each confined mainly to a particular part of the country. The British conquest of this variegated land was not effected by a few decisive military strokes within a short time, but was spread over a long century and accomplished bit by bit. As new possessions came under their rule, arrangements had to be made to govern them. Officials of the East India Company who were called upon to form political sub-divisions of the country during the period and process of conquest could not have the

perspective of a whole British Indian dominion, because it had not become a reality then. They had to provide a suitable administrative machinery for groups and patches of territory which came intermittently into their hands. The problem was often solved by the new areas being simply added to an adjoining older possession of the Company and brought under its administration. No thought was given to the homogeneity or otherwise of the combination from the point of view of race, language or religion.

PRINCIPLES ON WHICH PROVINCES SHOULD BE FORMED. The formation of provinces in a country ought to be effected in accordance with certain basic principles which may have to be modified in the light of particular circumstances. For instance, under normal conditions, given a fairly numerous population and sufficient economic resources, a common language, common customs and traditions, common modes of life and thought and a common territory are regarded as natural lines of demarcation and division. They would recognize and represent distinct entities unified by strong internal ties. But no such principles were adopted in the formation of the Indian provinces. The basis of the determination of their boundaries was not ethnological, linguistic or cultural. The one and only consideration which brought them into existence was immediate administrative convenience, as visualized by officers who were guided only by standards of practical expediency.

PROVINCES FORMED IN AN UNSCIENTIFIC MANNER. Hence, some of the British Indian provinces became very heterogeneous in their composition and structure. They were conspicuous for a great variety of language and society. The province of Bombay, for instance, consisted of three

distinct cultural and linguistic groups, Gujarat, Maharashtra and Karnataka. Similarly, the province of Madras comprised people speaking Kanarese, Telugu, Tamil and Malayalam. The present States of Bombay and Madras are successors of the corresponding British Indian provinces and they possess the same peculiarities of composition. The creation of such patchworks is injurious in two ways. It breaks up units that are homogeneous—for instance, Karnataka, which is divided between Bombay, Madras, the Hyderabad State and the Mysore State—and brings together units which do not feel spontaneously attracted towards each other by a community of language and mental outlook.

DEMAND FOR THEIR REARRANGEMENT. The spasmodic and irrational method of the formation of provinces has had an interesting sequel. There has arisen in many parts of the country considerable agitation for a rearrangement of provincial boundaries on more rational and equitable lines. The growth of education has produced a self-consciousness in this as in all other spheres of public life. People who are closely united by ties of a common race, a common language and a common culture, find themselves split into ineffective political fragments. They feel that their material and intellectual progress is unnecessarily hampered as the result of such a dissipation of their collective strength. Several homogeneous groups have therefore protested against their political dismemberment under a foreign government and have demanded that they should be restored to their natural unity.

ARGUMENT AGAINST THE DEMAND. The creation of new provinces has been deprecated by some eminent critics on financial as well as national grounds. It is held to be a costly luxury. If the provincial area is small, it cannot

be self-sufficient in the matter of its income and expenditure. Its administrative machinery may also prove to be inadequate to meet all the various needs of social uplift according to modern standards. Such lean provinces will then become a burden upon the Federation which will have to help them with subventions in order that their budgets could be balanced. It was decided, for instance, after the Act of 1935, that Sind and Orissa should be given annually about a crore and half a crore of rupees respectively by the Central Government to enable them to make up their deficits. It cannot be disputed that the certainty of financial stability and solvency is an indispensable prerequisite in the creation of any new province. If it cannot be satisfied, the idea must be dropped. The critics also point out that the present incongruous formation of provinces has its own advantages in a larger national sense. It brings together under one administrative system several of the regional groups of which India is made. They get an opportunity to work together and to understand each other. Such contact between diverse populations is to be desired, as it helps in rounding off the angularities of a narrow provincialism and inculcates the broader national vision which is so urgently required in India. A cosmopolitan outlook and a capacity for assimilation are at least as essential in the modern world as the strength which comes from an innate coherence. There is certainly truth in this contention. But there are also other weighty arguments which must be considered and then the balance of advantage determined.

THE REQUIREMENTS OF A DEMOCRACY. India has adopted democracy as its ideal. The successful functioning of democracy postulates that even the common man should take direct and intelligent interest in the affairs

of the State, understand and exercise his civic rights with vigilance and fulfil the obligations of citizenship with enthusiasm and diligence. That will be possible only if he has a thorough knowledge of the language in which the business of the State is transacted; and the mother-tongue is the easiest and the most natural medium for this purpose, as it is indeed for all aspects of social intercourse and social education. The formation of provinces on a linguistic basis will provide such homogeneous units. They will facilitate administration and will probably make it less expensive. They will also help in raising the general standard of information and of the intellectual equipment of the community as a whole by making it possible to avoid to a great extent the terrific wastage, spuriousness and superficiality which inevitably follow from the adoption of a foreign language as the medium of instruction for large masses of students.

The fear that such 'linguism' will only accentuate disruptive tendencies and destroy the sense of a common Indian nationhood which has been built up during the last century, seems to be misplaced. Most of the States in north India—U.P., Bihar, Bengal, Rajasthan, etc.—are unilingual; but it cannot be said that because of this factor the outlook of their people is less national and more separatist or narrow. There is no reason why the basis of language for the administrative divisions of a country should by itself necessarily generate or encourage the forces of disintegration. On the contrary, deplorable linguistic jealousies and bitter hostilities which are often found to mar and distort life in heterogeneous provinces and which derogate from a sense of healthy national solidarity can be attributed to the absence of a linguistic basis in the formation of provinces and to the consequent

inevitability of a clash of interest among the different linguistic groups in the same area. The clash can be easily avoided if groups which are not homogeneous are not unnecessarily huddled together.

Creation of Centrifugal Forces. Besides, it must also be remembered that strong forces can be simultaneously set in motion to counteract disruptive tendencies. For example, the adoption of a common national language, the study of which is made obligatory on every citizen; a common political apparatus, legislative, administrative and judicial, exercising power over the whole country and introducing uniformity of administration in several subjects of vital importance; complete freedom of movement, settlement and trade and commerce within the country; the throwing open of Services in government in any part of India and in any State to all citizens irrespective of their State domicile; these steps are all bound to exert a powerful unifying influence throughout the country and they have already been adopted by the Constitution. Further, deliberate and intelligent efforts to promote intimate inter-State contacts, particularly in respect of regional literatures and cultures, can surely be encouraged in an atmosphere of national patriotism and local freedom. Unity based on real mutual knowledge and a genuine understanding of the ways of life and thought of each other is likely to be far more abiding than an artificially created medley of miscellaneous comradeship.

As has already been stated in Chapter 2 the authority to alter the boundaries of the existing States, to readjust them and to create new States out of them is vested in Parliament; it can pass the laws necessary for that purpose on the recommendation of the President, that is, the Ministry. But before such legislation can be undertaken

and adopted the views of the population directly affected by the proposed change must be ascertained through their legislatures, though legally speaking these views will not be binding either upon Parliament or upon the President. If the Central Government and Parliament are not prepared to take any action in this direction, the matter cannot proceed at all. The underlying idea seems to be to prescribe a procedure which would ensure, whenever necessary, a proper balance between what may be considered to be national interest and the wishes of the people of a particular area.

In response to the strong and persistent demand, particularly from people living in multi-lingual areas, for a more rational regrouping of the States in the Indian Union, the Government of India appointed the States Reorganization Commission in 1953. Its Report was published in October 1955 and contained several recommendations for a radical change in the general set-up of the existing States. If implemented, they will materially alter the present political map of India. A summary of the main recommendations of the Commission has been given in the Appendix to this book.

6

REASONS FOR MAKING INDIA A FEDERATION

Till the passing of the Act of 1935, India was a unitary State. The Act aimed at establishing an all-India Federation including what were then known as British India and the Indian States. The new Constitution is also supposed to have given a federal form to the Indian polity. It would, therefore, be relevant to make a brief reference to these two types of constitution and to show the main points of difference between them. Both types are found to be existing and functioning in contemporary times. For example, England, France, Belgium, Italy, Sweden, Norway are unitary states ; the United States of America, Canada, Australia, Switzerland and Soviet Russia are federations.

PECULIARITIES OF A UNITARY STATE. A unitary State is one in which all governmental authority is concentrated in one supreme sovereign body. This body is vested with exclusive control over all matters, whether civil or military, concerning the State, and can pass laws, take executive action, impose taxation and incur expenditure in respect of any subject. There are no statutory limits on its jurisdiction and its authority, and it is responsible for making suitable arrangements for the efficient governance of the whole nation. It would, of course, be physically impossible for such a centralized organization to exercise direct administrative powers over a large geographical area. The difficulty becomes all the greater in a country which is

huge in expanse and population. Even in a unitary State, therefore, smaller territorial divisions have to be, and are formed for the convenience of administration. A specific sphere of activity is demarcated for them, and within that sphere they may be allowed considerable liberty of judgement and action. Still, the constitutional position is quite clear. These units or provinces or states are merely the creations of the sovereign body, and unquestionably subordinate to its mandates in all respects. They owe their existence, powers and status entirely to the central government. By assigning some important administrative work to such political divisions, that supreme functionary does not abdicate any of its ultimate authority but only delegates some of its powers, under certain conditions, to a subordinate agency. It is free to resume at any moment what it has thus delegated, and is competent to exercise over-riding jurisdiction over all the actions and policies of its subordinates. In short, in a unitary State there are no equals of the central government even in a limited sense. Its authority is supreme, and its will is not hampered by the existence of rights and privileges which it must respect and cannot touch.

PECULIARITIES OF A FEDERATION. On the other hand, a federation embodies principles which are fundamentally different, and results from the operation of certain psychological and sentimental forces. Even in its constitution there does exist a central government which is possessed of large powers. But it does not enjoy that all-pervading absolute authority which is postulated for it in a unitary State. A federation is in fact a product of circumstances. There may be living, in the same neighbourhood, a group of small but independent national units, each having its own language, racial characteristics, and even religious

beliefs. Yet, in spite of these differences, these states may also possess some common heritage, common affinities, common economic and political interests, and a common culture in the wider sense. They may therefore feel attracted towards each other for co-operative action by the impulse of a larger collective development. Or, even if such an inner similarity and tendency towards fusion are not present, the danger of a common enemy who threatens all of them may naturally tend to bring the neighbours together in a closer alliance. Such states, while desiring to preserve their individuality, may also be eager to form a union with others for certain specific purposes. They may be prepared to part with some of their sovereign powers in order to facilitate the creation of a larger composite sovereignty which would encompass all of them. A sort of political compact, whether actual or implied, may naturally follow from such a situation. It would provide the foundation and structure of a federal polity, and define clearly the relations of the contracting parties. A constitution which is based on such a compact is naturally written and rigid and can be amended only with the consent of the constituent units who have made it. A supreme authority to interpret its language and articles and to settle disputes about jurisdiction which may arise between the central authority and the units or among the units themselves is indispensable in this arrangement. A Federal or Supreme Court is therefore an essential part of a federation.

CENTRAL GOVERNMENT AND THE STATES. It will be realized that the new political master, in the shape of the central government in a federation, is not an alien imposition, but is created out of themselves by the uniting nations and consists entirely of their representatives. The

jurisdiction and authority of this superior are not unlimited, but are carefully demarcated and defined in the constitution itself. Within that sphere, it demands and obtains the unswerving loyalty of all the constituent units. Outside that sphere, it has no power or control and cannot interfere with the working of the provincial governments, which enjoy complete freedom of action and policy in their own sphere. Thus the provinces or states in a federal constitution have certain inherent rights and privileges guaranteed to them by the constitution itself. They are inviolable by the central authority. These component units do not exercise their power merely in virtue of delegation by a superior from which it is really derived. The distribution of governmental work between them and the centre is effected by the constitution to the framing of which they have been a party and to which they have voluntarily subscribed.

Unity in Diversity. The federal arrangement is particularly suitable to populations which are not essentially homogeneous and yet have so many things in common that they form a distinct nationality in a broad sense, as is the case with India. It maintains the identity and independence of the different constituents and also brings them under the control of a vigorous central Government. Unity without a deadening uniformity, diversity without disruption, free association without suppression are the chief objectives and the *raison d'être* of a federation. It effects reconciliation between a strong sentiment of local patriotism and an equally strong urge for an organic and indivisible union of the local entities in the interest of defence, of industrial and economic development and of the growth of a common culture.

Disappearance of the Indian States. Since the attain-

ment of independence the distinction between British India and the Indian States has vanished and the fundamental reality of India's territorial, cultural and national integrity has been vindicated and established. The difficulties created by the disparity between the constitutional status of the Rulers of the States and the British Indian provinces have now completely disappeared because the Rulers have agreed to accept the new political set-up created by independence and given up their claims to a privileged isolation. The federation contemplated by the Act of 1935 was intended, among other things, to reconcile the treaty rights of the Rulers with the necessity of evolving a common political structure for the whole of India, but that particular reason no longer exists. However, there are other considerations which in the view of many responsible persons make it very desirable that the constitutional framework for India should be of a federal type.

VAST EXPANSE OF INDIA. The most important of these considerations is the immense territorial extent of the country. India has been described as a sub-continent. The government of such a vast geographical expanse by a single unified authority would present many difficulties, even if it is assumed that its inhabitants are thoroughly homogeneous in point of race, language and religion. A highly centralized Government operating for such an extensive region might prove to be at once inadequate and excessive from the point of view of the needs of its provinces. Distance would make it difficult to establish continuous personal contact between the rulers and the ruled. In short, the task of administration might prove to be too unwieldy for the machine set up to carry it through.

Further, India is not only a country of continental dimen-

sions but is also extremely varied in the composition of its population. Its huge area presents striking variations of cultural and economic development. It abounds in numerous races, speaking different languages and professing different religions. Each one of the territorial units has a distinctive group consciousness, distinctive traditions and ambitions. The Indian people as a whole do not possess that inner affinity and coherence which are contributed by a common language, a common race and a common religion. On the other hand, many European countries are compact racial and linguistic units and some of them are also very small in size.

An Inherent Unity. Yet it is indisputable that behind all the racial, linguistic, religious and political divergence that is presented by the Indian panorama, there is an inherent oneness, a fundamental unity. Geographically, India has been a distinctive coherent whole from historical times and that in itself is a great uniting factor. Politically, it has lived at intervals under the unifying influence of a single imperial authority. Above all, among very large portions of its population there has existed such a close affinity in intellectual and emotional outlook, in cultural development and spiritual allegiance, that they feel themselves to have been made in the same basic mould and to belong to the same family.

Federation Most Suitable. Those who framed a constitution for India had to take into consideration these peculiarities. The Indian State ought to be an expression of Indian life. There must be diversity in it and also a fundamental unity. The form of the Indian government must embody and be consistent with that contradictory dualism. It should facilitate the growth of the individual component units and also of the whole nation. Indian statesmen felt

that this ideal could be best achieved by a federal constitution. It could secure to the constituent States all the necessary freedom to develop in their own way and to govern themselves, and also provide a strong Central Government to guard and advance the interests of all.

No Pre-existing Sovereign States in India. Writers on political science have described one characteristic feature of a federation. It is formed, they say, as the result of a deliberate combination of States which are sovereign. These States must choose to sacrifice their independence in the cause of a new corporate existence. It would, therefore, seem to follow that where there are no independent sovereign States pre-existing, a federation cannot be brought into being. This principle is deduced from the experience of history because the confederacies of ancient times and the federation of the U.S.A. had evolved out of such a situation. Canada and Australia do not, however, fit in with this principle, because their provinces were not sovereign before they were united in a federation. The fact of the matter is that laws of social sciences—and politics is a social science—are in the nature of a summation of human experience. They cannot be completely rigid but must have the elasticity and fullness of a living organism. The generalizations that they make may sometimes prove to be inadequate because a particular type of experience has been exaggerated into a universal law.

Forming a Federation out of a Unitary State. It is true that as a result of the operation of historical forces India was till 1937 a completely unitary State with a strong Central Government. But that fact could not be allowed to be an impediment in the way of its being transformed into a federal State if such a State was considered to be in the best interests of the country. This course may be

the reverse of the process witnessed in the past in other countries. Instead of independent units being joined together to form a new State it had to happen in the case of India that a strongly knit centralized organization should first be split up into autonomous units and then these units should be combined with each other to form a new State on a different basis. There could be nothing wrong in such a procedure if circumstances demanded it. Constitution building cannot be left to be obstructed by imperfect scholastic dogmas and inflexibility. The way must always be open for natural adjustments and growth.

ESSENTIAL CONDITIONS PRESENT. As has been explained earlier, two factors are necessary to bring the federal doctrine into play and both of them are found in India. There could therefore be no theoretical or practical difficulty in giving a federal shape to the Indian polity. The first of these factors is the existence of separate groups of human beings, differentiated from each other by language and race, but each distinct in itself. The second is a keen desire on the part of these groups to coalesce to a limited extent and also to retain their individuality in the amalgamated whole. The political independence of these groups may be usual but is not indispensable. It is infinitely more important that they should be distinct racial, linguistic or cultural units, and further, that they should sincerely aspire to combine into a common nationhood. The Federation of India has, therefore, come into existence to satisfy the requirements of the Indian people. The structure and distribution of powers in this Federation have, however, certain peculiarities which represent a bold departure from several accepted practices and have evoked considerable comment and criticism. They have been described in the following chapters.

7

DISTRIBUTION OF SUBJECTS BETWEEN THE UNION AND THE STATES: THE THREE LISTS

THREE LISTS OF SUBJECTS. The Indian Constitution, like all federal constitutions, has clearly demarcated the spheres of authority of the National Government and of the State Governments. There are different methods of making this demarcation. A specific list of subjects may be assigned to the Centre and everything else may be left to the States; or a specific list may be drawn up for the States and all the rest may be assigned to the Centre; or two separate lists may be drawn up, one for the States and the other for the Centre, with residuary powers left either to the Centre or to the States. The course that is followed in India since the Act of 1935 and now by the new Constitution is unprecedented and unique. It has provided three separate lists, one for the Centre, one for the States and a third for their concurrent jurisdiction and authority. Each one of these lists is made fully exhaustive and even includes important branches and subdivisions of the same subject. Among them the lists have covered the whole field of all possible governmental activity as far as the human mind can visualize at present. It is also made clear that residuary powers are vested in the Centre and if by any remote chance anything has been left out or if anything unexpectedly arises in the future in the operation of a dynamic Government it will be dealt with not by the States, but by the Union Government.

Principles of their Compilation. A federal constitution, because it is written, is also rigid and there may arise occasions of differences and disputes regarding the precise limits for the exercise of authority by the Centre and the units. Each may charge the other with encroachment and interference, and litigation on that account may be both copious and frequent. The framers of the Indian Constitution have endeavoured to see that the assignment of powers is neither inadequate nor ambiguous, and that there is no need or occasion left for the introduction of the doctrine of 'implied powers' as was done by the Supreme Court of the U.S.A. The three lists that have been compiled by them are very detailed and elaborate so that there may not be much room for doubt about jurisdiction. The main principles that underlie the compilation are simple to grasp. Matters which concern the whole country, are of vital importance to national interests and, therefore, ought to have a uniformity of policy and action throughout the land, must be left to the Centre; matters in which local knowledge, local interest and local resources can be most appropriately and effectively utilized for the purpose of administration and in which a variety of policies would be natural and desirable are left to the States; matters in regard to which fundamental principles ought to be uniform throughout the country, but in the execution of which some latitude could be allowed for taking cognizance of local peculiarities are incorporated in the concurrent list. This list is intended to be a useful device for securing uniformity wherever necessary but without centralization, and to lessen the confusion that may be caused by that multiplicity of law and practice which would hinder the growth and consciousness of a common nationality.

TENDENCY TOWARDS CENTRALIZATION. The standards for determining which items may appropriately be allocated to which list will vary in their content according to the degree of material progress made by a country and the trends of its social and political thought. Scientific inventions in modern times are substantially reducing time and distance and are bringing all humanity into one orbit, into what has now become a classical phrase 'One World'. The forces leading to centralization and integration are more prominent than those emphasizing separateness. In those countries which have adopted the federal form the sphere of the central or federal Government has been continuously widening by sheer force of circumstances. Even the U.S.A. has not escaped from this irresistible process. Some writers have gone to the length of saying that the federal stage may inevitably lead to the unitary stage, because the impulse for union cannot be abruptly or arbitrarily stopped. The opportunity for mutual contact and understanding that the federation provides is bound to create closer bonds and bring about a greater coherence amongst the constituent units. The Indian Federation perceptibly reflects this strong bias in favour of centralization both in the number and in the nature of the subjects specified in the Union List, and also in the provision for administrative and legislative control that the Centre may exercise over the States in various ways in normal times as well as in emergencies.

The three lists are given in the Seventh Schedule of the Constitution and are reproduced below in an abridged form:

LIST I—THE UNION LIST. (1) Defence of India including preparation for defence. (2) Naval, military, air and any other armed forces. (3) Cantonment areas. (4)

Naval, military and air force works. (5) Arms, firearms, ammunition and explosives. (6) Atomic energy and mineral resources necessary for its production. (7) Industries necessary for the purpose of defence or for the prosecution of war. (8) Central Bureau of Intelligence and Investigation. (9) Preventive detention for reasons connected with defence, foreign affairs, or the security of India. (10) Foreign affairs. (11) Diplomatic, consular and trade representation. (12) United Nations Organization. (13) Participation in international conferences and implementing of decisions made thereat. (14) Entering into treaties and agreements with foreign countries and implementing them. (15) War and Peace. (16) Foreign jurisdiction. (17) Citizenship, naturalization and aliens. (18) Extradition. (19) Admission into, and emigration and expulsion from, India; passports and visas. (20) Pilgrimages to places outside India. (21) Piracies and crimes committed on the high seas or in the air. (22) Railways. (23) Highways declared to be national highways. (24) Shipping and navigation on inland waterways, declared to be national waterways. (25) Maritime shipping and navigation, education and training for the mercantile marine. (26) Lighthouses. (27) Major ports. (28) Port quarantine. (29) Airways; aircraft and air navigation; provision of aerodromes. (30) Carriage of passengers and goods by railway, sea or air, or by national waterways in mechanically propelled vessels. (31) Posts and telegraphs; telephones, wireless, broadcasting and other like forms of communication. (32) Property of the Union and the revenue therefrom. (33) Acquisition or requisitioning of property for the purposes of the Union. (34) Courts of Wards for the estates of Rulers of Indian States. (35) Public debt of the Union. (36) Currency,

coinage; foreign exchange. (37) Foreign loans. (38) Reserve Bank of India. (39) Post Office Savings Bank. (40) Lotteries organized by the Government of India or the Government of a State. (41) Trade and commerce with foreign countries; definition of customs frontiers. (42) Inter-State trade and commerce. (43) Incorporation, regulation and winding up of trading corporations. (44) Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities. (45) Banking. (46) Bills of Exchange, cheques, promissory notes. (47) Insurance. (48) Stock exchange and futures markets. (49) Patents, inventions and designs; copyright; trade marks and merchandise marks. (50) Establishment of standards of weight and measure. (51) Establishment of standards of quality for goods to be exported out of India or transported from one State to another. (52) Industries, the control of which is declared to be expedient in the public interest. (53) Regulation and development of oilfields and mineral oil resources; petroleum and petroleum products. (54) Regulation of mines and mineral development. (55) Regulation of labour and safety in mines and oilfields. (56) Regulation and development of inter-State rivers and river valleys. (57) Fishing and fisheries beyond territorial waters. (58) Manufacture, supply and distribution of salt. (59) Opium. (60) Cinematograph films for exhibition. (61) Industrial disputes concerning Union employees. (62) The National Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial, and the Indian War Memorial, and any other like institutions financed by the Government of India to be of national importance. (63) The Benares Hindu

University, the Aligarh Muslim University and the Delhi University. (64) Institutions for scientific or technical education financed by the Government of India. (65) Union agencies and institutions for (*a*) professional, vocational or technical training; or (*b*) the promotion of special studies or research; or (*c*) scientific or technical assistance in the investigation or detection. (66) Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions. (67) Ancient and historical monuments and records, and archaeological sites and remains. (68) The Survey of India; the Geological, Botanical, Zoological and Anthropological Surveys of India; Meteorological organizations. (69) Census. (70) Union public services; all-India services; Union Public Service Commission. (71) Union pensions. (72) Elections to Parliament, to the Legislatures of States and to offices of President and Vice-President; the Election Commission. (73) Salaries and allowances of members of Parliament, the Chairman and Deputy Chairman of the Council of States and the Speaker and Deputy Speaker of the House of the People. (74) Powers, privileges and immunities of each House of Parliament and of the members and the committees of each House. (75) Emoluments, allowances, privileges and leave of the President and Governors; Ministers for the Union; Comptroller and Auditor-General. (76) Audit of the accounts of the Union and of the States. (77) The Supreme Court. (78) High Courts. (79) Extension or exclusion of the jurisdiction of a High Court. (80) Extension of the powers and jurisdiction of members of the police force belonging to any State to any area outside the State. (81) Inter-State migration. (82) Taxes on income other than agricultural income.

(83) Duties of customs including export duties. (84) Duties of excise on tobacco and other goods manufactured or produced in India except (*a*) alcoholic liquors for human consumption; (*b*) opium, Indian hemp and other narcotic drugs and narcotics, but including medicinal and toilet preparations containing alcohol. (85) Corporation tax. (86) Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies. (87) Estate duty in respect of property other than agricultural land. (88) Duties in respect of succession to property other than agricultural land. (89) Terminal taxes on goods or passengers, carried by railway, sea or air; taxes on railway fares and freights. (90) Taxes other than stamp duties on transactions in stock exchanges and future markets. (91) Rates of stamp duty in respect of bills of exchange, cheques, promissory notes, policies of insurance, transfer of shares, debentures. (92) Taxes on the sale or purchase of newspapers and on advertisements published therein. (93) Offences against laws with respect to any of the matters in this List. (94) Inquiries, surveys and statistics for the purpose of any of the matters in this List. (95) Jurisdiction and powers of all courts, with respect to any of the matters in this List; admiralty jurisdiction. (96) Fees in respect of any of the matters in this List, but not including fees taken in any court. (97) Any other matter not enumerated in either List II or List III including any tax not mentioned in either of those Lists.

LIST II—THE STATE LIST. (1) Public order. (2) Police, including railway and village police. (3) Administration of justice; constitution and organization of all courts, except the Supreme Court and the High Court. (4) Pri-

sons, reformatories, and persons detained therein. (5) Local government. (6) Public health and sanitation; hospitals and dispensaries. (7) Pilgrimages, other than pilgrimages to places outside India. (8) Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors. (9) Relief of the disabled and unemployable. (10) Burial and cremation grounds. (11) Education, including universities. (12) Libraries, museums; ancient and historical monuments and records other than those declared by Parliament by law to be of national importance. (13) Roads, bridges, ferries, municipal tramways, inland waterways and traffic thereon. (14) Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases. (15) Preservation, protection and improvement of stock and prevention of animal diseases; veterinary training and practice. (16) Pounds and the prevention of cattle trespass. (17) Water-supplies, irrigation and canals, drainage and embankments, water-storage and water-power. (18) Rights in or over land, land tenures including the relation of landlord and tenant; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization. (19) Forests. (20) Protection of wild animals and birds. (21) Fisheries. (22) Courts of Wards. (23) Regulation of mines. (24) Industries. (25) Gas and gas-works. (26) Trade and commerce within the State. (27) Production, supply and distribution of goods. (28) Markets and fairs. (29) Weights and measures except establishment of standards. (30) Money-lending and money-lenders; relief of agricultural indebtedness. (31) Inns and inn-keepers. (32) Corporations, other than those specified

in List I, and universities; literary, scientific, religious and other societies and associations; co-operative societies. (33) Theatres and dramatic performances; cinemas, sports, entertainments and amusements. (34) Betting and gambling. (35) Works, lands and buildings. (36) Acquisition or requisitioning of property. (37) Elections to the Legislature of the State. (38) Salaries and allowances of members of the Legislature of the State, of the Speaker and Deputy Speaker of the Legislative Assembly and, if there is a Legislative Council, of the Chairman and Deputy Chairman thereof. (39) Powers, privileges and immunities of the Legislature and of the members and the committees thereof. (40) Salaries and allowances of Ministers for the State. (41) State public services; State Public Service Commission. (42) State pensions. (43) Public debt of the State. (44) Treasure trove. (45) Land revenue, including the assessment and collection of revenue. (46) Taxes on agricultural income. (47) Duties in respect of succession to agricultural land. (48) Estate duty in respect of agricultural land. (49) Taxes on lands and buildings. (50) Taxes on mineral rights. (51) Duties of excise on alcoholic liquors for human consumption. (52) Taxes on the entry of goods into a local area for consumption, use or sale therein. (53) Taxes on the consumption or sale of electricity. (54) Taxes on the sale or purchase of goods other than newspapers. (55) Taxes on advertisements other than advertisements published in the newspapers. (56) Taxes on goods and passengers carried by road or on inland waterways. (57) Taxes on vehicles. (58) Taxes on animals and boats. (59) Tolls. (60) Taxes on professions, trades, callings and employments. (61) Capitation taxes. (62) Taxes on luxuries, including taxes on entertain-

ments, amusements, betting and gambling. (63) Rates of stamp duty in respect of documents other than those specified in List I. (64) Offences against laws with respect to any of the matters in this List. (65) Jurisdiction and powers of all courts, except the Supreme Court. (66) Fees in respect of any of the matters in this List, but not including fees taken in any court.

LIST III—CONCURRENT LIST. (1) Criminal law. (2) Criminal procedure. (3) Preventive detention for reasons connected with the security of a State, the maintenance of public order, or the maintenance of supplies and services essential to the community. (4) Removal from one State to another State of prisoners, accused persons and persons subjected to preventive detention. (5) Marriage and divorce; adoption; wills, intestacy and succession; joint family and partition. (6) Transfer of property other than agricultural land; registration of deeds and documents. (7) Contracts. (8) Actionable wrongs. (9) Bankruptcy and insolvency. (10) Trust and Trustees. (11) Administrators-general and official trustees. (12) Evidence and oaths; recognition of laws, public acts and records, and judicial proceedings. (13) Civil procedure. (14) Contempt of court. (15) Vagrancy; nomadic and migratory tribes. (16) Lunacy and mental deficiency. (17) Prevention of cruelty to animals. (18) Adulteration of foodstuffs and other goods. (19) Drugs and poisons. (20) Economic and social planning. (21) Commercial and industrial monopolies, combines and trusts. (22) Trade Unions; industrial and labour disputes. (23) Social security and social insurance; employment and unemployment. (24) Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old-age

pensions and maternity benefits. (25) Vocational and technical training of labour. (26) Legal, medical and other professions. (27) Relief and rehabilitation of displaced persons. (28) Charities and charitable institutions. (29) Prevention of the extension from one State to another of infectious or contagious diseases or pests. (30) Vital statistics including registration of births and deaths. (31) Ports other than major ports. (32) Shipping and navigation on inland waterways. (33) Trade and commerce in, and the production, supply and distribution of, the products of industries declared to be expedient in the public interest. (34) Price control. (35) Mechanically propelled vehicles. (36) Factories. (37) Boilers. (38) Electricity. (39) Newspapers, books and printing presses. (40) Archaeological sites and remains other than those declared to be of national importance. (41) Custody, management and disposal of evacuee property. (42) Principles on which compensation for property acquired or requisitioned is to be determined. (43) Recovery in a State of claims in respect of taxes and other public demands, arising outside that State. (44) Stamp duties other than judicial stamps. (45) Inquiries and statistics for the purpose of any of the matters specified in List II or List III. (46) Jurisdiction and powers of all courts, with respect to any of the matters in this List. (47) Fees in respect of any of the matters in this List, but not including fees taken in any court.

LARGE POWERS GIVEN TO THE UNION. Even a cursory glance over these Lists will be enough to testify to the overwhelming importance that has been given to the Central Government in the Indian Federation. The total number of subjects enumerated in the Union List is as much as ninety-seven as compared with sixty-six that are

enumerated for the States. Besides, the Union Parliament has power to make laws in respect of forty-seven items included in the Concurrent List. It is true that the latter is not an exclusive power because the State legislatures can also pass laws on those subjects. However, if laws are enacted both by the Union and by a State in regard to any matter in the Concurrent List and if the two laws are inconsistent and conflicting with each other, the Union law supersedes the State law. It would, therefore, hardly be an exaggeration to say that whenever the Union so desires the Concurrent sphere can for all practical purposes turn into the Union sphere.

The exposition of the distribution of powers between the Union and the States would not be complete only by a study of the contents of the three lists. The Constitution has also defined the relations that would exist between the two Governments in legislative, administrative and financial matters. These relations must be clearly understood in order to get a correct picture of the totality of the powers possessed by the Union *vis-à-vis* the States and of the ambits of their respective authority. It would then be possible to assess the nature of the federal structure which the Constitution has created and to relate it to the principles of federal polity as they have been defined by political writers. This is done in the next chapter.

8

RELATIONS BETWEEN THE UNION AND THE STATES AND THE NATURE OF THE FEDERATION

NO CONSTITUTION-MAKING POWER TO THE STATES. Before explaining the relations between the Central Government and the constituent units attention may be drawn to one or two distinctive features of the Federal Union of India. Like all federations, the Federation of India has created a dual polity, but unlike the U.S.A., which allowed the States to have the right to continue their own constitutions or to modify them or even to make them if the States were new, it has laid down detailed Constitutions for its constituent States. The States in India have, therefore, no power or freedom to deviate from what has been prescribed for them in the same framework which has also prescribed the Constitution of the Union. There will, therefore, exist the same form of government based on the same political principles in all parts of India.

NO DUAL CITIZENSHIP. Similarly, the creation of a dual polity has not resulted in the creation of a dual citizenship. The power of creating or conferring rights of citizenship has not been allowed to be enjoyed by individual States. There is only one single citizenship for the whole country, namely, Indian citizenship, and no citizen can enjoy any special privilege merely because he happens to be the resident of a particular State. This is a departure from the American law which allows its States to have the right of creating and conferring their own

citizenship on the residents within each State area.

Object of Equality of Representation in the Upper Chamber. In a federation the Upper Chamber is intended to represent the States as units and their equality of status is embodied in the equality of their representation in the Upper Chamber. In the U.S.A., for instance, every State, big or small, sends the same number of representatives to the Senate. The Lower Chamber, on the other hand, represents the people of the country as a whole and each State is given representation in it in proportion to its population. This arrangement is a contrivance to avoid two different kinds of dangers. As a federation is likely to be composed of units which may be disparate in size and population, it may happen that a few of the bigger States are able to secure a majority of votes in its legislature and then on the strength of that majority they may try to interfere with the rights and liberties of the smaller States. On the other hand, if the smaller States are fairly large in number and if equal representation is granted in the legislature to all the States as units, the smaller States could combine to form a majority and on the strength of that majority be tempted to tamper with and harass the bigger States. And both these undesirable attitudes, strictly speaking, will be within the four corners of the Constitution. The federal mechanism, therefore, provides that there shall be a Lower House which will represent the people of the country as a whole and where, therefore, the bigger States having larger population will be at an advantage because they can control a large number of votes, and an Upper House which shall represent the States as units and where, therefore, there will be complete equality of representation for them. In this Chamber the smaller States will be at an advantage because by a common agree-

ment amongst them they could mobilize considerable voting strength. When it is further laid down that no law can be finally enacted unless it has received the assent of both the Chambers, the balance of power that is sought to be set up becomes evident and clear. The underlying fundamental principle is that the uniting process represented by a federation should not be tantamount to either the bigger States being constitutionally in a position to absorb the smaller States against their will or *vice versa*, the smaller States constitutionally being in a position to dismember or disrupt the bigger States against their will.

NO EQUALITY OF REPRESENTATION IN THE COUNCIL OF STATES. In the Indian Federation, however, this principle has not been accepted. The Council of States which is the Upper Chamber, is not formed on the principle of equality of representation to the constituent units irrespective of their size or population. The number of seats assigned to the different States varies according to their population and size and actually is found to range from one to thirty-seven. Besides, there will be a small number of non-elected members who do not represent any unit, because the President has been given the power to nominate twelve members in the Council of States. A political party which has been able to secure a strong hold on popular opinion in most of the bigger States can, therefore, capture all the seats that are allotted to them in the Council of States and can wield a substantial voting strength in that Chamber. A large number of smaller States in which the same political party may not perhaps have been able to acquire that much popularity may find themselves in a position of being out-voted merely because a premium has been put on the numerical strength of the population of the bigger units. This is a clear instance of the emphatic preference for

centralization that undoubtedly inspired the framers of the Indian Constitution, even though they endeavoured to give it the federal form.

Legislative Relations between the Union and the States. The legislative relations between the Union and the States have now to be described. Territorially speaking, Parliament is empowered to make laws for the whole of India or any of its parts, and the legislature of a State to make laws for the whole of the State or any of its parts. Speaking from the point of view of the subjects for legislation, Parliament has exclusive powers to make laws with respect to any of the matters enumerated in List I, that is, the Union List, and the legislature of any State specified in Part A or Part B of the First Schedule has exclusive power to make laws for such State or any of its parts with reference to any of the matters enumerated in List II, that is, the State List. Both Parliament and the legislature of any State specified in Part A or Part B of the First Schedule have power to make laws with respect to any of the matters enumerated in List III, that is, the Concurrent List. If Parliament as well as a State legislature happen to make laws on the same subject in the Concurrent List and if it is found that the two laws are in conflict with each other, it is laid down that the law made by Parliament shall supersede the law made by the State; any provisions of the latter which are repugnant to what has been enacted by Parliament will be null and void. In fact where the three Lists come in conflict the order of priority is that the Union List will prevail over the State List and the Concurrent List, and the Concurrent List will have priority over the State List. If a subject is included both in the Union List and the State List, it is Parliament alone which will be competent to pass a

law on that subject, but where it is not quite clear as to whether a particular subject is in the Union List or in the State List, the matter will be left to judicial interpretation and an endeavour will be made to reconcile them by reading the two Lists together. If it is found that a reconciliation is absolutely impossible then, as provided by the Constitution, the law passed by the Union will prevail. It has been ruled by several judges of the Supreme Court of America and also the Privy Council in England that while interpreting all the implications of the Lists of subjects that have been assigned to the Central Government and to the State in a federation, the principle of what is described as 'pith and substance' or 'the true nature and character' of the disputed enactment shall be adhered to and observed.

Power of the Council of States to Declare a Subject to be of National Importance. In spite of the fact that in keeping with the essentials of a federal arrangement a clear distribution of subjects between the Union and the States has been made by the Constitution, the latter also contains a further provision which will have the effect of transferring any subject in the State List to the Concurrent List so that the Union Parliament will get the power to pass a law concerning such a subject. It is laid down that if the Council of States has declared by a resolution that it is necessary or expedient in the national interest that Parliament should make a law with respect to any matter enumerated in the State List and specified in the resolution, then it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution is in force; such a resolution must be supported by not less than two-thirds of the members present and voting.

The resolution and any law made by Parliament under its authority shall remain in force for a period not exceeding one year at a time and could be renewed for similar periods by the Council of States by a similar majority.

INCOMPATIBILITY WITH THE FEDERAL PRINCIPLE. Such a drastic power given to one House of the legislature is unique in the history of federations. It practically negatives one of the most fundamental principles associated with federal polity, namely, that encroachment either by the Central Government or by the State Government on spheres which are exclusively assigned to the one and to the other will not be permissible. If any modification or rearrangement of the distribution of powers between the two entities is generally desired, the proper method of bringing it about would be only by an amendment of the Constitution. In India, however, matters are much more simplified. A resolution of the Council of States declaring an item to be of national importance is sufficient to lift an item out of the exclusive purview of the State Governments. The more popular chamber, that is, the House of the people, does not come into the picture at all; the matter is not referred to it and there is no question of its assent being taken to what after all amounts to nothing less than an amendment of the Constitution. It is argued that because the Council of States represents States as units, the assent of its two-thirds majority may be taken as the assent of the constituent limbs of the federation and it should suffice for bringing about a change which may even adversely affect them. Two points, however, must be noted in this connexion. Firstly, the majority that is prescribed is not two-thirds of the total number of members of the Council, but of those present and voting; if there is a large number of absentees and

abstentions it is conceivable that important decisions may be taken by a comparatively small number of members. Secondly, the Council of States is not formed on the principle of equality of representation to the component units irrespective of their size or population. The bigger States have a large number of seats and they would naturally exercise a decisive influence on the ultimate voting. The Council has also a small non-elected nominated element which could not be considered to speak for any State.

Its Justification. The justification that is given for the grant of such a power to the Council of States is that the newly-born State of India does require a strong central authority both to ensure its preservation against external aggression and internal disruption, and its rapid progress in all directions. If in the pursuit of this object it is found that a certain subject which is in the State List has assumed national importance, the national government must be allowed to handle it without unnecessary loss of time. The food problem is certainly a problem affecting the whole country. Its solution depends to a considerable extent on vigorous improvements in the agricultural sphere. Yet, the subject of agriculture may be in the State List. Under these circumstances, it may be necessary in the interest of the nation as a whole for the Central Government to take action in regard to agriculture even though the subject specifically falls in the State List. Such an argument may appear to be valid and the necessity of making the Constitution elastic enough to satisfy such requirements with comparative ease may be conceded; but then it must also be made clear that such an arrangement, however desirable, could not be described as a federation in the accepted sense of the term.

UNION CAN MAKE LAWS DURING EMERGENCIES When a Proclamation of Emergency issued by the President is in operation, Parliament shall have power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List. Such a law will continue to have effect during the currency of the Proclamation and for a period of six months thereafter. A power of this type is essential in times of national crisis. During the two World Wars even in countries like the U.S.A., Australia and Canada the tendency towards an enlargement of federal powers in order to meet the grave emergency was found in practice to be irresistible.

LAWS TO IMPLEMENT INTERNATIONAL AGREEMENTS. Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other bodies. This power is consequential on and incidental to the power vested in the Union to enter into treaties and agreements with foreign countries and implementing them.

LAWS FOR STATES BY CONSENT. If it appears to the legislatures of two or more States to be desirable that Parliament should make a law for a subject falling in the State List, Parliament will have the power to do so and then the law shall apply to the States concerned and to any other State by which it is adopted afterwards. An Act so passed by Parliament may be amended or repealed by Parliament itself and the State to which it applies will have no power to amend or repeal it.

ADMINISTRATIVE RELATIONS BETWEEN THE UNION AND THE STATES. After having discussed the relations of the

Union to the States in legislative matters, a reference must be made to the administrative relations that exist between the two as prescribed by the Constitution. It is clearly stated that the executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament, and that the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose. Similarly, the executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the Union is empowered to give such directions to a State as may appear to the Government of India to be necessary for that purpose. The Union can give directions to a State as to the construction and maintenance of means of communication which are declared to be of national or military importance. It can also give directions to a State as to the measures to be taken for the protection of railways within the State. The Government of India will, however, pay to the State Government such sums of money as may be agreed to or as may be determined by an arbitrator appointed by the Chief Justice of India to cover the extra cost that may be incurred by the State of carrying out the Centre's directions in this respect. If any State fails to comply with or to give effect to any directions given by the Union, it shall be lawful for the President to hold that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution, and to take the requisite consequential action.

The President may, with the consent of the Government of a State, entrust to that Government functions in relation to any matter to which the executive power of the

Union extends. Parliament also, when it makes a law which applies in any State, may confer powers or impose duties upon the State or its officers in respect of that subject, even though it does not fall within the competence of the State legislature. Disputes regarding the use, distribution or control of waters of any inter-State river or river valley may be decided by adjudication and Parliament has the power to make by law a provision to that effect. If at any time it appears to the President that the public interest would be served by the establishment of a Council charged with the duty (*a*) of inquiring into and advising upon disputes which may have arisen between the States; (*b*) of investigating and discussing subjects in which some or all of the States or the Union and one or more of the States have a common interest; or (*c*) of making recommendations upon any such subject and particularly for the better co-ordination of policy and action with respect to that subject, the President can by order establish such a Council and define the nature of the duties to be performed by it and its organization and procedure.

It will be seen that these powers of the Union in regard to States are intended to be exercised in normal times. In spite of the federal form given to the Constitution, the administrative machinery functioning for the country taken as a whole is intended to satisfy the requirements of an integrated unit. For the purpose of carrying out the laws which are passed by Parliament and which are valid throughout the country, there is no separate administrative machinery controlled and financed by the Government of India set up in every State. The responsibility for the faithful and adequate execution of the powers vested in the Union to operate within the territory of a State is

thrown on the shoulders of the State Governments themselves. The judiciary of the whole country also forms a single integrated unit, having jurisdiction over all cases arising under various laws. There are no separate federal courts for the administration of federal laws. Courts in the States have to administer both Union and State laws.

UNION'S POWERS IN EMERGENCIES. In times of national peril when a Proclamation of Emergency has been issued by the President and is in operation, the Union Government can give directions to any State as to the manner in which the State's executive power should be exercised; during such periods Parliament is also empowered to make laws conferring powers and imposing duties upon the Union or its officers regarding matters which are not enumerated in the Union List. It is distinctly laid down that it shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of the Constitution. If the President is satisfied that a situation has arisen in which the government of a State cannot be carried on in accordance with the provisions of the Constitution, he may by Proclamation assume to himself all or any of the functions of the government of the State and all or any of the powers exercised by the Governor or the Rajpramukh; he may declare that the powers of the legislature of the State shall be exercisable by or under the authority of Parliament; and he may make such incidental and consequential provisions as may be necessary for giving effect to the objects of the Proclamation including provisions for suspending in whole or in part the operation of any provisions of the Constitution relating to the State; the President, however, shall have no right

to assume to himself any of the powers exercised by a High Court or to suspend any provision of the Constitution relating to High Courts.

If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or any of its parts is threatened, he may issue a Proclamation to that effect. When such a Proclamation is in operation the Union Government can give directions to any State to observe such canons of financial propriety as may be specified in the directions and to give any other directions as the President may deem necessary for the purpose. They may include a provision requiring the reduction of salaries and allowances of persons serving in a State and a provision requiring all Money Bills to be reserved for the consideration of the President after they are passed by the State legislature.

The consequence of all these emergency provisions will be to suspend the legislative and the executive authority of the States even in respect of matters which have been specifically allotted to them by the Constitution. For all practical purposes the federal government will be transformed into a unitary government and for the time being all governmental powers will be concentrated in the hands of the Union.

FINANCIAL RELATIONS BETWEEN THE UNION AND THE STATES. Turning to the financial relations between the Union and the States, it is found that certain sources of revenue are allotted to the States, but the power of imposing taxes or duties in regard to them is vested in the Government of India. The distribution of the proceeds of such taxes among the different States is to be determined in accordance with such principles as may be formulated by Parliament by law. In respect of these sources that

are demarcated for them, the States are not free to take any action whenever they feel inclined to do so. In fact, the initiative must come from the Union Government and if that Government is reluctant to take the necessary steps, the States by themselves are not made competent to move in the matter for the fulfilment of their ambitions. No State can impose a tax on the sale or purchase of goods where such sale or purchase takes place outside the State or in the course of the import of goods into or export of goods out of the territory of India or in the course of inter-State trade or commerce. No law made by the legislature of a State imposing a tax on the sale or purchase of any such goods as has been declared by Parliament by law to be essential for the life of the community, shall have effect unless it has received the assent of the President. No State can impose a tax on the consumption or sale of electricity which is consumed by the Government of India or which is consumed in the construction, maintenance or operation of any railway of the Government of India.

It will be clear from this explanation of the power vested by the Constitution in the Union Government that every effort has been made to make that government much stronger than what central governments usually are found to be in federal constitutions. The emphasis palpably is more on the authority of the centre than on the autonomy of the units. As a matter of fact even where that autonomy is supposed to be guaranteed, interference and dictation by the centre is not only not prohibited, but authorized as a normal procedure of the functioning of the Constitution. The absence of equality of representation to the States in the Council of States; the power given to that chamber to declare by a two-thirds majority of its members present and voting any subject to be of

national importance; then to enable the Union Parliament to pass a law in regard to the subject even if it happens to be included in the State List; the power of the Union to give directions to the State Governments; and the power given to the President practically to suspend the State Constitutions in times of emergency—these exceptional features of the Indian Federation have led to the posing of the question as to whether it is a federation at all. In fact, it has actually been described as being only a quasi-federation or as a unitary federation, because of the concentration of enormous powers both legislative and administrative in the Union.

TWOFOLD OBJECT OF THE FRAMERS OF THE CONSTITUTION. However, it was stated in the Constituent Assembly that the framers of the Constitution had two objects; first, to create a form of government for India which would take into account all the diversity of its past and present life and provide for the requirements that are inseparable from this diversity. Second, to create at the same time a political and administrative machine which would fully satisfy the obligations created by the emergence of a new united sovereign democratic State both in respect of its preservation against external and internal enemies and in respect of its vigorous progress in every direction—economic, political, social and moral—so as to enable it to maintain its consolidated unity and the tempo of its dynamic activities and aspirations. It is said that the constitution of a country must, after all, reflect the peculiarities and complexities of its social and political life and if it is found desirable that India should have a type of federation which would possess such a degree of flexibility as would automatically enable it to adjust itself to and serve the need of the different circumstances in which

the country may find itself placed, there could be nothing wrong in such a structure being created by the Constitution.

A NEW TYPE OF CONSTITUTION. That, in spite of its marked emphasis on centralization, the Federation of India does possess certain federal peculiarities, cannot be denied. The spheres of activity for the Union and the States are precisely laid down by the Constitution itself and within that particular sphere the authority of each is prescribed to the exclusion of the other in normal times. A dual polity is thus definitely established and for decisions in all cases of conflicts that will arise as a result of this dualism a Supreme Court has been created by the Constitution, the decisions of which will be binding upon the Union as well as upon the States. The Constitution is written, is elaborate and is rigid and its supremacy over all the governmental units is recognized. A federation which can easily become a unitary state in times of crisis may ultimately prove to be a variety of constitutional form hitherto unknown to history. The innovation is introduced by India and if it is found to be successful by practical experience it may even be taken to be a distinctive contribution made by this country to the political thought and practice of the world.

9

THREE BRANCHES OF GOVERNMENT AND THE MEANING OF PARLIAMENTARY GOVERNMENT

THE LEGISLATURE, THE EXECUTIVE AND THE JUDICATURE. Writers on political science have classified the functions of government in three broad categories, and even an ordinary citizen can easily distinguish them. They are not of course entirely watertight compartments, but they correctly indicate the different phases of organized social activity. Thus, a government has to (i) frame laws adequately and properly, (ii) carry out laws effectively and honestly, and (iii) interpret laws and examine their application in a spirit of justice and progress. A threefold mechanism is usually provided in a modern state for the performance of this threefold duty: the Legislature, the Executive or the Ministers, and the Judicature. These institutions are formed on certain definite principles and are closely woven in the fabric of national life.

THE NATURE OF THEIR COMPOSITION. It is generally agreed that the Legislature ought to be a large and representative body, because it is empowered to pass laws which may affect all and which have to be obeyed by all. In determining ideals and policies and prescribing general restrictions, it is appropriate that full scope should be given for the expression of the public will and the divergent view-points that it may include. On the other hand, the Executive, which is concerned not with deliberation but with action, must be a small, talented,

disciplined and compact body. If the governmental machine is to move with speed and vigour and if a high level of administrative efficiency has to be attained, it is necessary to collect a small number of trained experts and entrust them with the task of managing routine affairs. Different considerations prevail in the composition of the Judiciary. The judge is the guardian of civil privileges, liberties and rights. Particular care must therefore be taken to see that the judicial authority is constituted by persons who are learned, fearless and impartial, and whose integrity is above suspicion.

THE THEORY OF THE SEPARATION OF POWERS. The theory of the separation of powers which was in vogue in the eighteenth century and which had inspired the framers of the American Constitution was based on the belief that a combination in the same hands of any two of these three functions of government would be disastrous to the liberty of the individual. It was pointed out that though the institution of government is absolutely indispensable for civilized existence, the fact that in the nature of things that institution has to be armed with all kinds of restrictive powers cannot be ignored; the utmost care has to be taken to see that the opportunity and the temptation afforded to it to abuse its powers are reduced as much as possible. One easy and effective safeguard against such an abuse was considered to lie in the prevention of any combination of governmental functions in the same agency. The Legislature, the Executive and the Judiciary must be kept entirely distinct, must be manned by separate personnel and among themselves must have perfect equality of status and importance so that no one is in a position to dominate the other. In a democracy, all the three would owe their office to the choice of the people, and

having unfettered freedom and discretion in the performance of their duties they would actually serve as a balance and as a check upon each other's actions. In the U.S.A. the President, the Congress and the Supreme Court were intended to be entirely independent of each other, though in actual practice it has been found that there cannot be watertight compartments in the functioning of government.

INDEPENDENCE OF THE JUDICIARY. Political developments in modern times have belied the fears on which the theory of separation was based. It is only in respect of the Judiciary that independence of status and authority is now considered to be vital because absolute impartiality and fearlessness in the dispensation of justice must be secured at all costs. Neither the Legislature nor the Executive can be permitted to interfere with the normal course of the judicial process. Complaints and accusations may be made against the Executive itself, and there must be assurance of fair trial for the establishment of guilt and for the punishment of the wrong-doer, whatever his official and social status. All that degree of independence which is requisite for the fulfilment of this purpose is conferred upon the Judiciary by the Constitutions of free and democratic countries. The powers and conditions of service of the judges are so framed that it would hardly be feasible for legislators or Ministers to bring undue pressure to bear on them in the performance of their duties. It must, however, be understood that there are limitations even to the independence of the Judiciary. They are inherent in the ultimate supremacy of the citizens of a state over all the instruments of its government. It is the people of a country who must be left to determine the ideals and objectives of social life and the manner of their realization. Even judges are bound to respect their wishes, after

those wishes have been expressed through the appropriate constitutional channel.

ELECTED AND REPRESENTATIVE LEGISLATURES. The working of modern democracy has, in fact, come to crystallize certain noteworthy features, the most prominent of which is the unique importance which has come to be acquired by the Legislatures. Formerly, they were comparatively small bodies elected on a restrictive franchise which was based on wealth and birth, and not reflecting the feelings and sentiments of the masses at large. Now their structure, composition and character have entirely changed. In democratic countries Legislatures are now sufficiently large bodies elected on the basis of the widest possible franchise by means of which every adult citizen, rich or poor, man or woman, gets the right to vote. They are, therefore, taken to be fully representative of public opinion and are, in fact, described as the nation itself in miniature. Consequently a great prestige and a lofty status have naturally come to attach to them and from being purely law-making chambers in the past, they have now evolved into vital centres which have the privilege of making and unmaking Ministries and exercising general control over the administration. This has led to the emergence of a new pattern of the political machine now universally familiar as responsible or parliamentary government. It originated and steadily developed in England during the course of a century and can justly be claimed by that country as a distinctive contribution made by the British genius to political science and practice.

MEANING OF PARLIAMENTARY GOVERNMENT. The essence of responsible government which is also known as parliamentary government lies in the Legislature's absolute and complete control over the Executive. It is a necessary

qualification for a Minister that he must be a member of the Legislature, and that party or combination of parties which is able to command a majority of its votes has the responsibility of forming the Ministry and carrying on the Government. In this system, the law-making bodies certainly make laws, but they also exercise many other powers; for example, all taxation and all expenditure of the state are dependent entirely on their assent and vote; it is they who practically appoint the Ministers, supervise and direct their policies, and in case of a disagreement even dismiss them. The daily routine of departmental management is not, indeed, directly looked after by the Legislatures, but the general line of administrative action and the general principles governing the policies of the state are all inspired and dictated by their opinions and authority. In other words, an all-sided control of the conduct of the state vests in the Legislature. The most famous illustration of this system is the British Cabinet which is completely subordinate to Parliament and continues in office only so long as it is able to retain the confidence of the House of Commons, which is the popular House.

THE PECULIARITIES OF THE PRESIDENTIAL FORM. The responsible or parliamentary form of government is distinguished from what is described as the presidential or non-responsible form which obtains in the U.S.A. The President of that nation, who is the head of the Executive, is directly elected by the people and appoints his own Ministers who are responsible to him and not to Congress. Neither the President nor any of his Ministers can be members of the Legislature. The President dictates the policies which his Government will follow and it may even happen that his views are at variance with those

that are held by a majority of the members of the Legislature. The President who is the elected leader of the American people is not placed, like the Prime Minister of England, in such a constitutional position as would enable him to direct the affairs of state in every important respect. The possibility of a conflict between the President and his administration on the one hand and the Congress on the other is not precluded in the operation of this system and if such a conflict does arise it inevitably results in a political stalemate which cannot be easily resolved because of the co-ordinate powers of the Executive and the Legislature.

SUPREMACY OF THE LEGISLATURE. It will be seen that the parliamentary system is the very negation of the theory of the separation of powers, and yet this system has been adopted by several countries including India because it is considered to be the most suitable instrument for democratic working. Experience has clearly demonstrated the impossibility of splitting up the functions of Government so as to make them mutually exclusive. Social life is an organic whole and the institution of Government which is intended to satisfy the numerous and varied requirements of that life must, in the nature of things, also be an organic whole. The making of laws cannot be completely divorced from the agency which executes the laws. Law is an expression of the social will; and the defects and inadequacies of legislation can be realized only by those who are entrusted with the responsibility of carrying out the legislation. Similarly, the body which decides and dictates policies and embodies them in laws ought to have an effective voice in the execution of those policies and laws. Otherwise there is the danger of apathy and remissness, if not of sabotage, in execution

if those who are called upon to execute the policies happen to have no faith in them. The Executive, under all circumstances, must be an instrument for carrying out the nation's mandate and its subordination to the Legislature would follow as a logical corollary of the fully representative character of the modern legislative chambers. In the parliamentary system legislative and executive leadership is combined in the same agency, namely, the Cabinet or the Ministry headed by the Prime Minister. Laws are proposed and passed on their initiative and laws which have been so passed are executed directly under their authority. They demand money for national expenditure and also suggest ways and means for getting the necessary finance. Conflicts between the Executive and the Legislature are not very likely in this arrangement and if occasionally they do arise, the solution is quite clear: the Executive must yield or must resign its office.

Distinction between the Functions of laying down Policies and their Execution. Another interesting development has manifested itself in the working of parliamentary government. The Executive has come to be divided into two sections represented respectively by the Ministry and the Services or the Administration. The division is in harmony with the two different aspects of the requirements of the state and of the responsibilities that flow from them. Firstly, the regulation and moulding of social life that is undertaken by the state presupposes the enunciation of the objectives and purposes for which that life has to be regulated and moulded. Ideals have to be visualized and targets have to be prescribed both for the present and for the future. The satisfactory performance of this duty demands a certain breadth of vision and a wide grasp of things which usually result

from a sound general education, experience of men and affairs, and cultural aptitudes and acquisitions of a varied nature. No special knowledge of administrative routine and of its inner working is essential in this context. What is required is an instructed mind, a comprehensive outlook and a proper appreciation of social and moral values. Secondly, after ideals and purposes have been defined, intelligent and vigorous steps have to be taken to translate them into reality. The successful implementation of idealistic programmes often presents many practical difficulties and it is in this sphere that the ability of the experts will come into play and they will be called upon to make their contribution. Their special knowledge, mastery of detail and skill in organization are of immense value in realizing the objectives which thoughtful leaders have placed before the nation.

MINISTERS ARE THE POLITICAL EXECUTIVE. Ministers are described as the political Executive and are appointed to be the heads of different departments. It is their duty to carry on and supervise departmental activities. Yet they are not supposed to be specially qualified for this responsible task. Ministers who are placed in charge of particular departments may have no previous knowledge or experience of their working or of the problems that are presented by them. In a sense, they are generally amateurs in administration having no special aptitude for organizing and arranging details and for dealing with the complexities that are associated with managerial functions. The Minister for War may never have been a soldier; the Minister for Finance may never have been a student of economics or finance. The Minister in charge of Public Works may be actually a doctor of medicine. It would seem as if, not specialized knowledge, but an

absence of knowledge of a particular subject is a qualification for holding the office of Minister in charge of that subject. This superficial incongruity is easily explained when the duties of a Minister are viewed in their proper perspective. He is concerned mainly with laying down policies and programmes, with imagining and assessing the shape of things to come, and must be possessed of that strong common sense, that capacity to take long views of things and to think out and formulate plans which characterize a statesman. It is these qualities rather than administrative ability in the narrow sense which must have priority in the selection of a person to be a Minister.

IMPORTANCE OF THE ADMINISTRATION OR THE BUREAUCRACY. On the other hand, the Services or the Administration consists of professional men who have chosen service as a career and who together form what is known as the bureaucracy. Security of tenure and other appropriate conditions of service are assured to them. They do not change with the party in power and are, in fact, expected to be entirely a-political. Their duty is to carry out loyally and to the best of their ability whatever policies they are asked to carry out, irrespective of their personal agreement or disagreement with those policies. Recruitment to the superior grades of the Services is made by independent commissions called Public Service Commissions which hold open competitive examinations for the purpose. The evils of nepotism and favouritism are thus considerably avoided. The recruits generally represent the finest type of intelligent young people who have achieved distinction in academic life and who can be trusted to operate the complicated administrative machine with efficiency, skill and a sense of responsibility. Because of the permanence of their tenure they are able to accumulate

that vast knowledge of the working of their departments and that rich experience of the administrative system as a whole which are extremely valuable assets to any government. It is the bureaucracy or the Services which supply the strong and stable inner framework of the governmental machinery and every attempt is made in the parliamentary system to maintain the strength of the framework and to augment its sustaining capacity.

COMBINATION OF THE EXPERT AND THE LAYMAN. It will thus be evident that parliamentary democracy does not imply government only by the specialist and the expert nor does it mean government only by the elected representatives of the masses, many of whom may not be qualified either by education or by knowledge or by experience to shoulder that responsibility or to understand all its implications. It is essentially a combination of the expert on the one hand and the layman who is the spokesman of the ordinary citizen on the other, with an emphasis on the supremacy of the latter as the constituent of the demos. In the operation of the system of political responsibility, the expert and the specialist have an honoured place; the vital need and value of their services is ungrudgingly recognized; they are trusted to execute all the important policies which may have been formulated by Ministers and legislatures, often with their help; but the fundamental principle is that the expert does not rule; he only cautions, advises and serves. The people of the country are the ultimate masters and their will as expressed in elected legislatures must unquestionably prevail.

THE HEAD OF THE STATE IS A CONSTITUTIONAL RULER. Another peculiarity of parliamentary government which has come to be acknowledged as an indispensable condition for its successful working is that the head of the State—

he is usually designated as the President—even when he is elected is not expected to exercise any real powers though quite a large number of them may have been conferred on him by the Constitution. Amidst all the flittings and fluctuations of day-to-day political life he is supposed to symbolize the unity of the nation and the permanence of its existence. Usually a man of great popularity, reputation for public service and ripe experience, the President is more a *de jure* than a *de facto* authority who must always act on the advice of his Ministers. Government may be conducted and action may be taken in his name, but not by him; his powers are in reality exercised for him and on his behalf by Ministers. They respect him as a guide, philosopher and friend and seek his counsel in difficulties, but are ultimately free to take their own decisions and pursue their own policies. The list of the President's powers may be long and impressive, but to invest him with them is only a constitutional device for the smooth functioning of the State machine. It would be a complete distortion of responsible government if the head of the State ceased to be a purely nominal and titular dignitary and if Ministers ceased to have exclusive control over policy and administration. It may be noted that the parliamentary system works most conveniently if there are only two dominant political parties in the country, each playing alternately the role of the Government and the Opposition. A multiplicity of parties and groups necessarily leads to the formation of coalitions and tends to weaken the authority of a Government which can be formed and can function only with the support of the Legislature.

FUNCTIONS OF THE LEGISLATURE IN PARLIAMENTARY GOVERNMENT. A reference may now be made to the

functions and the powers of the legislature in modern democracies, and particularly those of the parliamentary type. They can be described separately as referring to legislation, or to administration or to finance. (*a*) Legislative power means the power to enact laws. No measure can obtain the force of legality unless it is passed by the Legislature. Everything that is incorporated into the law of the land, and obedience to which is required of the citizens, has to receive the Legislature's sanction before it can be so incorporated and enforced. Unless otherwise provided, no Bill which is not voted by the Legislature can have application in a court of law. (*b*) The control over administration is exercised in various ways: (i) by moving resolutions, (ii) by moving votes of no confidence or censure, (iii) by moving adjournments, and (iv) by asking questions and supplementary questions to elicit information about departmental details.

(i) On any matter of public importance the Legislature might express a clear opinion after having discussed the issues thoroughly. This expression of opinion is in the form of a recommendation to the Government. It has no binding legal force. It is not a law and has not to pass through the elaborate procedure to which every Bill is subjected before its final consummation into an Act. Yet the expression of opinion has a value of its own. It makes plain the views of the elected representatives of the people, and therefore serves as an indicator which records the strength and the direction of popular opinion. A clear indication of the popular will cannot be ignored by any executive Government having a sense of responsibility. It serves to guide correctly, if not to control rigidly, any steps that may be contemplated by the executive authority.

(ii) A vote of no confidence or censure is the most direct way of expressing disapproval and of indicating the agency which it is desired to condemn. In a responsible administration, occasions for votes of censure are rare, for, before matters come to that pass, numerous indications are given of the existing displeasure and they are immediately understood. This right is of particular use in those forms of government where the Executive cannot be removed from office by the Legislature. A direct and emphatic condemnation of the actions of irresponsible officials is likely to serve as a moral restraint upon them.

(iii) Adjournment motions are intended to direct the attention of the house and the Government to any extraordinary happening involving the public weal or interest that might take place during the actual session of the house or that may have taken place only a short time prior to the meeting of the session. Any member may beg leave to move that the regular business on the agenda be temporarily suspended and that the house discuss the extraordinary occurrence, provided the Speaker allows the motion. The Speaker need not do so if he feels that the matter is not of sufficient importance. Motions for adjournment save the discussions of the chamber on prominent and burning topics of the day from being stale.

(iv) The power of asking questions and supplementary questions is extremely valuable. It serves to throw important sidelights on the administration by enabling members to elicit information regarding routine departmental management. It is useful in exposing any unjust or tyrannical abuse of the freedom of judgement and discretion that has necessarily to be allowed to the execu-

tive. Any member of the Legislature can put a question on a matter of public interest, subject to its disallowance by the Speaker, and if the answer given proves unsatisfactory, either the member who puts the question originally, or any other curious or dissatisfied member may put further supplementary questions. This at times approximates to a regular cross-examination. Details which are too trivial to be discussed in the form of resolutions and which are too important to be completely ignored can be brought up for public criticism through the exercise of the power of interpellation.

Publicity is the greatest check and the greatest corrective to the waywardness of all normal Governments. Publicity is of great value even when the form of government is a responsible democracy. Resolutions, adjournments, votes of censure, questions, and supplementary questions are instruments of publicity, and so long as the working of the Government has not become mechanical and unhuman, the fear of public criticism and public exposure proves a salutary restraint upon the actions of Government officials.

(*c*) The last and most important power that a Legislature can enjoy is control over the purse, that is, over taxation and expenditure. The great constitutional struggle in England throughout the Stuart period, and even earlier, centred round the disputed question whether the king could levy taxes without the consent of the people and spend them as he liked, irrespective of the wishes of Parliament. The most glorious achievement of the popular party in the struggle was the establishment of the principle that the money which the king's authority wanted to collect from the people by way of taxation must be voted by the representatives of the people

assembled in Parliament. Parliament must also decide the manner of its collection and the direction of its expenditure. The essence of democracy lies, among other things, in this undisputed control over the purse that is exercised by the people through their chosen representatives. The real power of any Legislature is to be measured by the degree of the monetary powers it enjoys. The English Parliament—or more correctly the House of Commons—is the sole authority for and the sole custodian of the finances of the Government of England. The executive can get only as much money as is voted by Parliament, and has to spend it on those purposes only for which it has been specifically voted. Finances are to the State what breath is to the body, and in responsible forms of government entire control over them is vested in the Legislature.

The Method of Study. The study of government ultimately resolves itself into a study of the three constitutional and administrative instruments, the Legislature, the Executive and the Judicature. Their form and their powers require close attention. Each has to be treated as an independent subject for investigation and comment. Then an attempt will have to be made to elucidate the manner in which they stand related to each other. That is the main scheme of the following chapters. The Union and State Governments will be studied as two separate entities. In the study of each, the executive and the legislative aspects will be distinguished from each other and explained at length in separate chapters. Then an account will be given of their mutual relations. The Supreme Court and the State Judicature will be described separately in their appropriate places.

Section II The Union Government

10

THE UNION EXECUTIVE: THE PRESIDENT

IMPORTANCE OF THE OFFICE. The Executive of the Union is composed of the President and the Ministry, apart from what is described as the Administration or the Services, who are of vital importance in running the machinery of the State, but who have no power of direction and of framing policy. It has already been stated that India has adopted the parliamentary in preference to the presidential system and therefore unlike the President of the United States, the President of the Indian Union is not intended to be the *real* head of the Executive. He is only the symbolic head of the State. All the same, he holds the most exalted office in the hierarchy of the country which naturally carries with it great prestige. The President personifies the unity and the solidarity of the nation and the abiding continuity of its existence. Technically speaking, he is invested with a large number of powers in all spheres of governmental activity and particularly so during times of national emergency. It is necessary to understand in detail the peculiarities of the constitutional position which he enjoys and the part that he is called upon to play in conducting the ship of the State through calm as well as troubled waters.

A CONSTITUTIONAL HEAD. It is important to remember

that the virtual executive power is wielded and exercised by the Cabinet consisting of the Prime Minister and other Ministers, who are technically appointed by him but are responsible to popularly-elected Legislatures representing the whole country. All the powers that are vested by the Constitution in the President have to be exercised by him on the advice of his Ministers, though the Constitution does not contain any specific provision which makes such a practice obligatory on the President. However, a convention to that effect is expected to be set up and invariably followed by the President at all times. Conventions and precedents play as vital a role in the working of parliamentary democracy as the letter of the Constitution. They must command the same respect and loyal adherence as the law itself. The spirit which inspires and underlies parliamentary democracy may not always find an adequate expression in its written form and structure, and political practices and traditions have to be deliberately set up to fill in the lacunae and complete the picture. In the early stages of the working of responsible government in India, the establishment of conventions of the proper type will be an important obligation on those who have the privilege of working the government and will have to be fulfilled with intelligence, knowledge and perseverance.

METHOD OF ELECTION. The President is to be elected by the members of an electoral college consisting of (*a*) the elected members of both Houses of Parliament, and (*b*) the elected members of the Legislative Assemblies of the States. He is not to be directly elected by the people on the principle of adult franchise and voting in constituencies specially formed for that purpose throughout the country. His election will be indirect, that is, he

will be elected by a comparatively small number of electors who are themselves elected to Parliament and State Legislative Assemblies by adult franchise. This method of indirect election is justified because governmental power is intended to be exercised really by the Ministry and the Legislature, and the President is to be only a constitutional, almost a titular, head. It is, therefore, quite unnecessary, indeed it would be a tremendous waste, to spend all the enormous energy, money and time that would be involved in a direct presidential election. In a huge country like India with about eighteen crores of enfranchised citizens it would be extremely difficult to provide a suitable electoral machinery to enable such an election to be carried out successfully. Besides, a directly elected President devoid of any real powers and working more or less only as an instrument in ministerial hands would be an anomaly.

It is laid down that as far as practicable, there shall be uniformity in the scale of representation of the different States at the election of the President. For the purpose of securing such uniformity among the States *inter se*, as well as parity between the States as a whole and the Union, the following method of calculation in the counting of votes has been devised:

(*a*) Every elected member of the Legislative Assembly of a State shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of the elected members of the Assembly.

(*b*) If, after taking the said multiples of one thousand, the remainder is not less than five hundred, then the votes of each member referred to in (*a*) shall be further increased by one.

(*c*) Each elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to the members of the Legislative Assemblies of the States under (*a*) and (*b*) by the total number of the elected members of both Houses of Parliament, fractions exceeding one-half being counted as one and other fractions being disregarded.[1]

The election of the President shall be held in accordance with the system of proportional representation by means of the single transferable vote and the voting at

[1] The following illustrations were given by the Drafting Committee to make the point clear. (It should be noted that they refer to a time prior to the integration of Bikaner into the Rajasthan Union.)

(i) The population of Bombay is 20,848,840. Let us take the total number of elected members in the Legislative Assembly of Bombay to be 208 (i.e., one member representing one lakh of the population). To obtain the number of votes which each such elected member will be entitled to cast at the election of the President, we have first to divide 20,848,840 (which is the population) by 208 (which is the total number of elected members), and then to divide the quotient by 1,000. In this case, the quotient is 100,239. The number of votes which each such member will be entitled to cast will be 100,239/1,000, i.e. 100 (disregarding the remainder 239 which is less than five hundred).

(ii) Again, the population of Bikaner is 1,292,938. Let us take the total number of elected members of the Legislature of Bikaner to be 130 (i.e. one member representing ten thousand of the population). Now, applying the aforesaid process, if we divide 1,292,938 (i.e. the population) by 130 (i.e. the total number of elected members), the quotient is 9,945. Therefore, the number of votes which each member of the Bikaner Legislature would be entitled to cast is 9,945/1,000, that is 10 (counting the remainder 945, which is greater than five hundred, as equivalent to 1,000).

If the total number of votes assigned to the members of the Legislatures of the States in accordance with the above calculation be 74,940 and the total number of elected members of both the Houses of Parliament be 750, then to obtain the number of votes which each member of either House of Parliament will be entitled to cast at the election of the President, we should have to divide 74,940 by 750. This gives the figure $99\frac{23}{25}$, or 100 (since the fraction $\frac{23}{25}$ exceeds one-half and is therefore to be counted as one).

such elections shall be by secret ballot. The system of proportional representation is supposed to give each minority group an effective share in political life. It is claimed that all shades of political thought can be more or less truly reflected under this system because all wastage of votes is avoided.

Qualifications and Disqualifications. No person is eligible for election as President unless (*a*) he is a citizen of India, (*b*) he has completed an age of thirty-five years, and (*c*) he is qualified for election as a member of the House of the People. A person will not be eligible for election as President if he holds any office of profit under the Government of India, or under the Government of any State or under any local or other authorities subject to the control of any of the State Governments; however, a person who is holding the office of the President or Vice-President of the Union, Governor or Rajpramukh or Uparajpramukh of any State or of a Minister either in the Union or in any State will not be considered to be holding an office of profit for the purposes of this restriction. The whole idea in laying down such a rule is to exclude members of the regular executive services under the Government from what after all is predominantly a political sphere. The President shall not be a member of either House of Parliament or of a House of the Legislature of any State; if a member of any of these Legislative Chambers is elected President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as President.

Tenure of Office. The President shall hold office for a term of five years from the date on which he enters upon his office and will continue to hold it until his successor enters upon his office. He is also eligible for

re-election. Even before his term of office is complete the President may resign his office, or may be removed from office by impeachment for violation of the Constitution. The resignation is to be addressed to the Vice-President and the latter has to communicate it forthwith to the Speaker of the House of the People.

SALARY, PRIVILEGES AND OATH OF ALLEGIANCE. The President shall not hold any other office of profit. He shall be entitled without payment of rent to the use of his official residences and shall also be entitled to such emoluments, allowances and privileges as will be determined by Parliament by law; until Parliament has made any such law, he will receive, as provided for by the Second Schedule of the Constitution, a salary of Rs 10,000 per month and also such allowances and other privileges as were payable to and enjoyed by the Governor-General of India immediately before the commencement of the Constitution. The emoluments and allowances of the President shall not be diminished during his term of office. Every President before assuming office must take an oath or make an affirmation that he will faithfully execute the office of President and will to the best of his ability preserve, protect and defend the Constitution and the law and that he will devote himself to the service and well-being of the people of India. The legal obligations imposed by the Constitution are thus strengthened by a great moral obligation.

POWERS VESTED IN THE PRESIDENT. The executive power of the Union is vested in the President and is to be exercised by him either directly or through officers subordinate to him in accordance with the Constitution. The supreme command of the Defence Forces of the Union is also vested in the President and its exercise will be regulated

by law. It is made clear that functions conferred by any existing law on the Government of any State or any other authority are not considered to be transferred to the President nor is Parliament prevented from conferring by law functions on authorities other than the President. The executive power means power to execute the will of the State, which in a democracy is expressed through popularly elected legislatures. In a modern State the business of the executive has very considerably expanded owing to the enormous increase in the functions of the State. It can be conveniently divided into several categories. A commentator on the Constitution has compiled a list of the various powers that have been invested in the President by the Constitution. The following account is based on that enumeration.[1]

1. *The Administrative Power.* As he is not the *real* head of the executive, like the American President, he has no direct administrative functions to discharge nor has he any power of control and supervision over the departments of Government as the American President has. The various departments of Government are managed by responsible Ministers, but the President is the *formal* head of the administration and as such all executive actions must be expressed to be taken in the *name* of the President and all contracts and assurances of property made on behalf of the Government must be expressed to be made by him. All officers of the Union will be his subordinates and he has the right to be informed of all the affairs of the Union. The power to appoint and remove the following high dignitaries technically vests in him: (i) The Prime Minister of India. (ii) Other Ministers of the

[1] D. D. Basu: *Commentary on the Constitution of India*, pp. 217-70.

Union. (iii) The Attorney-General of India. (iv) The Comptroller and Auditor-General of India. (v) The Judges of the Supreme Court. (vi) Judges of the High Courts of the States. (vii) The Governor of a State. (viii) An Inter-State Council. (ix) The Union Public Service Commission and a Joint Commission for a group of States. (x) The Finance Commission. (xi) Election Commissioners. (xii) The Special Officer for Scheduled Castes and Scheduled Tribes. (xiii) A Commission to report on the administration of Scheduled Areas; and a Commission to investigate into conditions of backward classes. (xiv) A Commission on languages.

2. *The Military Power.* The supreme command of the Defence Forces is vested in the President, but the exercise of this power is to be regulated by law and it is Parliament which has exclusive legislative power in regard to the Defence Forces and war and peace. The American President's powers as commander are greater, because he can assume emergency powers in that capacity.

3. *Diplomatic Power.* The power of making laws in regard to matters which concern India's relations with foreign States vests in the Legislature. In fact, that body is the final authority here as in other spheres. Still the initiative in regard to the negotiations of treaties and agreements with other countries lies with the Ministers and technically with the President though such agreements must be submitted to Parliament for its ratification. The President as the head of the Government represents India in international affairs and has the power of appointing ambassadors and other diplomatic representatives to foreign countries and of receiving similar representatives appointed by foreign States to India. The latter will present their credentials to him.

4. *Legislative Power.* The President is debarred from being a member of any House of the Legislature, but the Constitution has expressly laid down that Parliament will consist of the President and two Houses. He has many powers in relation to the Legislature: for example (*a*) The power to summon, prorogue and dissolve Parliament. (*b*) The right to give an opening address. (*c*) The right to address and to send messages to Parliament. (*d*) The power to cause certain reports and statements to be laid before Parliament, so that Parliament may have the opportunity to take action upon them, such as (i) the Annual Financial Statement and Supplementary Budget, if any, (ii) the report of the Comptroller and Auditor-General of India relating to the accounts of the Government of India, (iii) the recommendations made by the Finance Commission, together with an explanatory memorandum of the action taken thereon, (iv) the annual report of the Union Public Service Commission, explaining the reasons where any advice of the Commission has not been accepted, (v) the report of the Special Officer for Scheduled Castes and Tribes, (vi) the report of the Commission to investigate the conditions of the backward classes, with a memorandum explaining the action taken thereon. (*e*) The power to sanction the introduction of certain legislative measures: e.g. for the alteration of State boundaries; Money Bills; Bills involving expenditure; Bills affecting taxation in which the States are interested; State Bills imposing restrictions on freedom of trade. (*f*) The right to assent to legislation and the power to veto Union Bills and reserved State Bills. (*g*) The power to legislate by Ordinances during recesses of Parliament. Circumstances may arise in the country which require immediate

legislative action, yet such action may not be possible because the Legislature is not in session. The President, as the head of the State, is, therefore, empowered to issue what are described as Ordinances to meet the situation. He is of course expected to issue them on the advice of his Ministers. The Constitution lays down that if at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require; an Ordinance so promulgated shall have the same force and effect as an Act of Parliament. The Ordinance must be placed before both Houses of Parliament and will cease to operate at the expiration of six weeks after Parliament has re-assembled or even before that period if resolutions disapproving it are passed by both the Houses. An Ordinance may be withdrawn at any time by the President. An Ordinance can enact only such provisions as Parliament has the power to enact. If it contains any provision which Parliament would not under the Constitution be competent to enact, it shall be void. For instance, an Ordinance violating any of the fundamental rights would not be valid. The necessity for the promulgation of an Ordinance is to be judged by the President and his decision in the matter will not be justiciable. Similarly no maximum time-limit has been prescribed for the duration of an Ordinance. A period of six weeks after the re-assembling of Parliament is mentioned, but the re-assembling itself can be postponed up to a period of six months. It may be said that such a violation of the spirit of the Constitution on the part of the President is not likely. All the same, it must also be remembered that it is exactly in times of uncertainty and crisis that the greatest

need exists for safeguards against executive action. Even a popular Ministry which is not sure of its hold over the Legislature at any particular time may be tempted into advising the President to resort to this Ordinance-making power and thus circumvent the opinion of Parliament.

5. *Pardoning Power.* The President has the power to grant full, limited or conditional pardon in connexion with any punishment awarded by the law courts, reprieves (stay of execution of a sentence), respites (awarding a lesser sentence than what has been pronounced by the Judges), remission of punishment (reduction of the period of a sentence which is being undergone), to remit or commute the sentence (change to a lighter penalty of a different form; for example, from death to transportation) of any person convicted of any offence. This pardoning power of the President does not include the power of granting amnesty which is generally shown to political offenders and includes within its operation large groups of individuals. That power is left to Parliament.

6. *Emergency Power.* In cases of grave emergency (*a*) in which the security of India or any part of the territory of India is threatened whether by war or by external aggression or by internal disturbance, or (*b*) in which the failure of the Constitutional machinery in a State is reported, or (*c*) in which the financial stability or credit of India or any part of the territory of India is threatened, the President has the power to issue a Proclamation and to take such steps as he may think necessary to deal with the emergency, subject of course to the provisions of the Constitution.

Such a Proclamation must be laid before each House of Parliament; it shall cease to operate at the expiration of two months, unless before the expiration of that period

it has been approved by resolutions of both Houses of Parliament. A Proclamation may also be issued at a time when the House of the People is dissolved or the dissolution of the House may take place during the period of two months without a resolution approving it being passed by the House, though such a resolution may have been passed by the Council of States; in such a case it shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution, unless before that period a resolution approving the Proclamation has been passed by the House. There is no specific obligation on the President to summon, simultaneously with the issue of the Proclamation, a meeting of the Legislature if it is not in session; nor is there any provision making it obligatory on the President to order, simultaneously with the issue of the Proclamation, fresh elections if the House has been already dissolved. If the President is determined to defy the spirit of the Constitution and to behave in an autocratic manner without violating the letter of the Constitution it will be possible for him to rule by Proclamation for a period of two months if the House of the People does not stand dissolved, and for a period of six months if it has been dissolved. Such a contingency is too ominous to contemplate in the normal course of a nation's history. If it ever arises it will be strong evidence of a prostration of the democratic forces. But in a vigilant democracy no President would dare take such despotic action. Critics, however, have pointed out that it would have been much better if no such loophole had been allowed to remain in the Constitution. Dictators have managed to exploit precisely such vulnerable weaknesses and to destroy democracy by apparently democratic weapons.

7. *Miscellaneous Powers.* As the head of the Executive the President has been given what may be described as the rule-making power; this is necessary in order to enable the machinery of Government to move systematically and to avoid a deadlock for want of specific provisions. Thus he can make rules about the procedure with respect to joint sittings of the two Houses of Parliament, rules for the convenient transaction of business by the Ministers, rules as to how orders and instruments made in his name shall be authenticated, rules determining the number of members of the Union Public Service Commission, their tenure and conditions of service, and so on.

The President has been given power in some cases to take action till Parliament passes any law in regard to such matters as, for example, sanctioning grants-in-aid to the States which are in need of assistance, the percentage of income-tax proceeds to be assigned to and distributed among the States, or making rules for regulating the recruitment and conditions of service of persons serving the Union. He also has the power to refer any question of public importance for the opinion of the Supreme Court. He can also delegate his power to officers subordinate to him so that in every case it is not necessary that he should act personally.

It must be noted that all these powers of the President have to be exercised by him 'in accordance with the Constitution'. It is argued that these words are specifically put in in order to make him a constitutional ruler. The oath that he is called upon to take also imposes a moral duty on him to 'preserve, protect and defend the Constitution'.

This long list of powers that are vested by the Constitution in the President appears, indeed, to be very formid-

able, and to a superficial observer who has not grasped the essence of the parliamentary system of government such concentration of authority in one person may appear not only to be undemocratic but dangerous. It is, therefore, necessary again to emphasize that practically every one of these powers is intended and expected to be exercised in reality by the Cabinet which is responsible to the Legislature for the proper working of the administrative machine. The vesting of such powers in one person who, for all practical purposes, may be described as the head of the State is considered to be very desirable in order to enable quick and immediate action to be taken whenever it is necessary to do so, and also to enable small gaps in the operational machinery to be simply and adequately filled in.

It is necessary to make provision in any Constitution to remove the head of the State for grave breaches of the Constitution and crimes against the State. Even an elected President in a democracy may at times fall a prey to human frailty and behave in a manner which is entirely at variance with, and antagonistic to, the fundamental principles on which the State is founded. It is true that such occasions will be very rare, but if and when they unfortunately arise effective action must be taken to meet them properly. A special procedure, more difficult and elaborate than the ordinary procedue, must be laid down for taking penal action against the highest dignitary of the State. It must ensure that the fullest opportunity is given to him to vindicate his position and, further, that his guilt is proved to the satisfaction of an overwhelmingly large number of elected legislators who are his political associates and colleagues irrespective of party affiliations. Provision has been made in the Indian Constitution for

the impeachment of the President under exceptional circumstances when it is felt that his actions and attitude have been such that they amount to a violation of the Constitution.

The following procedure is laid down for that purpose: Either House of Parliament may prefer the charge against the President; the proposal to prefer such a charge must be contained in a resolution signed by not less than one-fourth of the total number of members of the House and is moved after at least fourteen days' notice in writing; such a resolution must be passed by a majority of not less than two-thirds of the total membership of the House.

When a charge has been so preferred by either House of Parliament, the other House shall investigate the charge, or cause the charge to be investigated, and the President shall have the right to appear and to be represented at such investigations. The House is thus empowered to delegate the work of investigation to a Court or a Tribunal appointed by itself for that purpose. The result of such investigation will prove useful in enabling the House to come to its own conclusions.

If after the investigation and as a result of it the resolution is passed by the House by which the charge was investigated or caused to be investigated, declaring that the charge preferred against the President has been sustained, such a resolution shall have the effect of removing the President from his office as from the date on which the resolution is so passed; a majority of not less than two-thirds of the total membership of the House being required for the passing of such a resolution.

It will thus be seen that impeachment will be a semi-judicial and a semi-political process. The decision in the matter will be taken by a majority of the votes of the

Legislature as they are taken on any other resolution, the only difference being that the majority requisite for this particular purpose will be much larger. However, the requirements of natural justice will be satisfied by the accused person being given the right to be heard and by the investigation being held in all probability by a body of competent judges who may be nominated to the special tribunal.

VACANCY IN THE OFFICE. An election to fill a vacancy caused by the expiration of the term of office of the President must be completed before the expiration of the term. If a vacancy has been caused by the death, resignation or removal of the President, the election will be held as soon as possible after the date of the occurrence of the vacancy and in no case later than six months after it. The person elected to fill such a vacancy shall be entitled to hold office for the full term of five years from the date on which he enters upon his office.

ELECTION OF THE VICE-PRESIDENT. The Constitution provides for the appointment of a Vice-President and he is the highest dignitary in the State after the President. He is to be elected by the members of both Houses of Parliament assembled at a joint meeting; voting will be in accordance with the system of proportional representation by means of the single transferable vote and the voting shall be by secret ballot.

No person shall be eligible for election as Vice-President unless he (*a*) is a citizen of India, (*b*) has completed the age of thirty-five years and (*c*) is qualified for election as a member of the Council of States. A person shall not be eligible for election as Vice-President if he holds any office of profit under the Government of India or Government of any State, or under any local or other authority

subject to the control of any of the State Governments. A person holding the office of President or Vice-President of the Union, of Governor or Rajpramukh or Uparajpramukh of any State or being a Minister of the Union or of any State will not be considered to hold any office of profit for this purpose.

The Vice-President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of any of these Legislatures is elected Vice-President he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Vice-President.

The term of office of the Vice-President will be five years and he shall continue to hold office until his successor enters upon his office. He may resign his office earlier; he may also be removed from office by a resolution of the Council of States passed by a majority of all the then members of the Council and agreed to by the House of the People; but no such resolution shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution. There will thus be no procedure of impeachment or investigation, and the voting in the House of the People will be by a simple majority.

CHAIRMAN OF THE COUNCIL OF STATES. The Vice-President shall be *ex officio* Chairman of the Council of States and shall not hold any other office of profit. If the office of the President falls vacant by reason of his death, resignation or removal or otherwise, the Vice-President shall act as the President until the date on which a new President elected to fill such a vacancy enters upon his office. When the President is unable to discharge his functions owing to absence, illness or any other cause, the Vice-President shall discharge his functions until the date

on which the President resumes his duties.

Whenever the Vice-President acts as the President and discharges his functions, he will have all the powers and immunities of the President and will be entitled to the same emoluments, allowances and privileges or to such as may be prescribed by Parliament by law.

The election to fill a vacancy caused by the expiration of the term of office of the Vice-President must be completed before the expiration of the term. If a vacancy has been caused by the death, resignation or removal of the Vice-President, the election shall be held as soon as possible after the date of the occurrence of the vacancy and in no case later than six months after it. The person elected to fill such a vacancy shall be entitled to hold office for the full term of five years from the date on which he enters upon his office.

Like the President, the Vice-President is also called upon before entering upon his office to take an oath or make an affirmation of allegiance to the Constitution of India.

A contingency may arise, though it will be very rare, when the office of President and also of Vice-President are vacant at the same time. There will, therefore, be a serious gap in the administrative machine. Parliament has been empowered to make such provision as it thinks fit for the discharge of the functions of the President in a contingency of this type.

All doubts and disputes arising out of or in connexion with the election of a President or a Vice-President shall be inquired into and decided by the Supreme Court and the decision of the Court shall be final. Parliament has been given the power to regulate by law any matter relating to, or connected with, the election of the President or Vice-President.

11

THE UNION EXECUTIVE: THE COUNCIL OF MINISTERS OR CABINET

Importance of the Cabinet. The Council of Ministers or the Cabinet is the most important part of the governmental machinery in the parliamentary form of democracy. The burden and the responsibility of carrying on all activities connected with the existence of the State and with its dynamic functioning in accordance with the ideals which it has prescribed for itself is placed on the shoulders of this unique body. It is expected to give the lead to the country in the different phases of organized political and social life, and to help in building up thoughts and ideologies which will ultimately bring about all those improvements and reforms in the social structure which will eliminate the inequalities and iniquities of an unfair social arrangement. It is the Cabinet which must take the initiative in suggesting concrete methods for the purpose of implementing those objectives which have received the intelligent approval of the community and the realization of which will result in a silent but profound transformation of the social and the economic order. It may be said that the parliamentary system has the distinctive merit of making it possible to bring about a revolution by the peaceful evolutionary process and that such a difficult achievement is one of the excellences of parliamentary democracy. The violence of the shocks that may be inevitably administered in the process of a vigorous alteration of the existing order, and which are always

implied in a revolution, are cushioned and absorbed in the operation of the system of political responsibility in which the decisive part is played by the Council of Ministers. The principles of the formation of that Council and its working were crystallized in England and have now been accepted in all the countries which have chosen to adopt the British model.

METHOD OF APPOINTMENT. The Indian Constitution has expressly stated that there shall be a Council of Ministers with the Prime Minister as the head to aid and advise the President in the exercise of his functions. Legally speaking, the Prime Minister is to be appointed by the President, and the other Ministers are to be appointed by the President on the advice of the Prime Minister. In actual practice, however, this power of appointment cannot be exercised by the President in his own free will and unfettered discretion. It may be repeated again that the system of parliamentary government works as much by usage and conventions as by the letter of the law; and in the early formative stages of India's parliamentary democracy it will be a vital necessity to lay down appropriate precedents and practices so as to conform to all the requirements of that form of government. Even the letter of the law cannot be interpreted in a purely literal or legalistic sense. It will have to be understood in the context of the essentials of the parliamentary system. A logically connected chain has to be visualized in this connexion. The citizens of the country, that is all the adult population, men and women, elect the Legislature which thus can be taken to reflect popular opinion and sentiment for the time being. Leaders of the Legislature, having the confidence of a large majority of the members, are entrusted with the responsibilities of carrying

on the work of government which will include the twofold duty of laying down policies and controlling and directing the administrative machinery. As long as their actions are in consonance with the wishes of the majority of the Legislature and supported by them, so long can they be said to be ruling with the support of the will of the people, and in this way democracy will manifest itself and assert its authority.

In the context of this fundamental theory the President's power of appointing the Prime Minister will inevitably be reduced to a formality. He must select only such a man as will be able to command a majority of votes in the Legislature. What happens in actual practice is this. Elections to Parliament are contested by several political parties, each of which has its programme and also its elected leader. Each party tries to persuade the electors to vote for its candidates and its programme. After the results of the election are known it may be found that a particular party has secured a majority of the total number of seats or, failing that, the largest number of seats in the House. The President must then invite the leader of that party to become the Prime Minister and to form his Ministry. There is practically no choice left to him. The Prime Minister is thus in fact given by the country to the President and, though nominally appointed by the latter, he really owes his elevated office to the will of the electorate. Any attempt on the part of the President to set aside a leader who commands the confidence of the legislature and to appoint another man in his place will lead to disastrous results because such a Ministry will not be allowed to function by Parliament, and a grave constitutional crisis will be precipitated. Only on occasions on which no one political party has been able to secure a

States is a permanent body, not subject to dissolution, one-third of the members retiring every two years. A Ministry which has the confidence of the House can continue to be in office for a maximum period of five years at a stretch; if in the new elections that take place after the dissolution of the House the same party is able to secure a majority, the same Ministry will naturally be returned to power, though perhaps with changes in its personnel that may be dictated by the exigencies of the situation. On the other hand, on exceptional occasions, it may also happen that within a comparatively short period of its assumption of office, and in spite of the support of the majority of the Legislature that it initially commanded, unexpected differences of a serious nature may arise between the Ministers and their followers in the legislative chamber. It may not be found possible to reconcile them and the Ministers will then have to tender their resignations even before the period of five years.

SALARIES AND ALLOWANCES. The salaries and allowances of Ministers shall be such as Parliament may from time to time determine by law; and until Parliament has passed such a law they will be paid the same salary and allowances as were payable to the holders of the office in the Dominion of India before the commencement of the Constitution. They are not charged upon the revenues of India and have to be voted by Parliament every year for individual Ministers at the time of the passing of the Budget. This procedure automatically gives an opportunity to the House of the People to discuss the working of ministerial departments and express their dissatisfaction with, or disapproval of, any particular action taken by Ministers, or of their general policy. A cut motion in the salary if pressed to a division, and carried by majority, will be interpreted as

a vote of censure upon the Minister and will in all likelihood lead to the resignation of the whole Cabinet. Such a contingency is, however, very remote, because in the normal working of parliamentary democracy Ministers will be very sensitive to the fluctuations of public opinion and will be quick to bring about the necessary adjustment between their own considered views and the trend of popular thought. They cannot allow matters to drift to such a climax that they find themselves suddenly confronted with the necessity of an abrupt withdrawal from the political scene because of the discovery that an unbridgeable gulf has developed between them and their followers who have won the elections.

Collective responsibility is an integral part and the very soul of parliamentary government and it has been specifically mentioned in the Constitution. This principle was gradually evolved and established in the political life of England over a long period and even today it operates in that country by means of an inviolable convention. Collective responsibility means that all Ministers are jointly and collectively responsible for what every one of them does or does not do. The work of government is indeed divided into different departments and they are allocated to individual Ministers who have to look after their administration. But, to Parliament and to the people of the country the Ministry is an indivisible whole, and is answerable, as a body, for the actions and policies which may have been taken in individual departments. If the action of any one of the Ministers becomes the target of severe parliamentary criticism and censure, it will not be only that particular Minister who will tender his resignation but the whole Ministry, including the Prime Minister, will resign. In short, in parliamentary democracy Minis-

ters led by their leader, the Prime Minister, come into office together, continue to be and work in office together, and, when the occasion arises, also go out of office together. This system ensures the solidarity of the Ministry and the creation of a strong Government which is so essential for the proper conduct of the affairs of the State.

GOVERNMENT BY PARTY. In modern times, government by party has come to be almost universally accepted as a normal and necessary feature of political life in democracies. Yet, the very basis and philosophy which underlie this system give food for serious thought. The point cannot be discussed here at any considerable length, but it may be asked whether what is interpreted as the normal duty of the Opposition, namely, to oppose practically every measure that is initiated and sponsored by the Government, merely because it is initiated and sponsored by them, does not involve a huge waste of the nation's time, talent, energy and money. Does it not tend to create a sense of unreality and even irresponsibility in the political atmosphere of the country? Is it either a natural or a healthy position that those who are not in office must on that account necessarily find themselves, both psychologically and physically, in the role of the Opposition? A sense of helplessness and frustration is naturally engendered in the mind of that section of the community which holds views different from the views held by the majority when it gets the unpleasant experience that Parliament, regimented by party discipline and loyally obeying the commands of party whips, is not a body open to argument, persuasion or correction. Is it really in the best interests of the nation that such an undercurrent of dissatisfaction should always be present to affect, if not to distort, its political life? It may often be found that the minority actually consists of fairly large

numbers and of intelligent and seasoned men whose opinions are entitled to consideration and respect.

However, in spite of these blemishes and shortcomings in the system of government by party, it seems to have been proved by experience that there is no other better alternative. Government on a purely non-party basis may turn out to be no Government at all or it may deteriorate into the intolerant dictatorship of one party. Whatever it may be, the party system has definitely made its appearance in Indian polity and how exactly it will be shaped in the future it is difficult to tell. Political life is as much a product of traditions as of law. In a country like England the role played by the Opposition in the government of the country is considered to be so important that the Leader of the Opposition is paid a regular salary from the public exchequer.

COLLECTIVE RESPONSIBILITY. The proper working of the principle of collective responsibility presupposes the existence of efficiently organized political parties, each with its own distinctive programme and ideology. A Cabinet consisting of several Ministers and called upon to work on the principle that all stand by one and one stands by all must necessarily be composed of persons who hold, broadly speaking, similar views, have more or less the same outlook on life and owe allegiance to the same ideals. Unless they are possessed of the same sympathies and feel attracted to each other by kindred ways of feeling and thought, they cannot as a body come to develop that homogeneity which alone can make collective action possible in all situations. That is why in actual practice the Cabinet consists of persons who are members of the same predominant political party in the Legislature, pledged to carry out the same programme under the leadership

of the same leader.

Exceptional Situation in India after the Advent of Independence. Sometimes in exceptional circumstances arising out of a pregnant and momentous chapter in the otherwise peaceful routine of national life, or created by the dismal shadow of a grave national emergency, the Prime Minister may invite leaders of other parties to join the Government; he may also invite other eminent men who have no party affiliations but whose experience, learning and ability would be an asset in the running of the administration. Such a liberal attitude on the part of the Prime Minister would give him the scope for a wide choice in picking up talent wherever available to be utilized in the service of the national cause. It would make his Ministry remarkably broad-based and create a feeling of general confidence in the country.

During the last few months of 1946 when independence was expected and during the first few years after its actual achievement in 1947, India naturally passed through an extraordinary psychological upheaval because in many respects such an event, combining freedom, political unity on a nation-wide scale and democracy, was unparalleled in the long history of the country. There was the thrill of the joy of liberation and of very alluring hopes and dreams of a happy future devoid of the glaring miseries of life. A great party organization had already been in existence for more than two generations and the victory that came to be associated with its leadership and activity in the battle for freedom gave to its leaders enormous prestige and popularity throughout the country. The Indian National Congress swept the polls in the elections of 1946 and the party was called upon to shoulder the responsibility of government. The problems that now

faced it were entirely different from those which it had been accustomed to handle during the period of the struggle for freedom. The primary needs of the ordinary man and woman throughout the country in respect of food, clothing, shelter, health and education had to be adequately satisfied in the shortest possible period of time. The defence of the infant State had to be effectively organized; plans for a rapid economic development, both industrial and agricultural, had to be visualized and undertaken on a grand scale; all this required qualities of constructive statesmanship and rich administrative experience which in the sterile atmosphere of political dependence during the days of British rule could not abundantly grow in the country.

The Congress, therefore, decided to include in its Ministry in the Central Government persons who were not previously within its fold, and even men who had been its severe critics. The attempt was to establish what may be described as a Ministry of all talents though it could not be described exactly as a coalition. It was acclaimed as a wise step which would foster a sense of national solidarity and prevent an unnecessary dissipation of energy and distraction of attention that is involved in an indiscriminate opposition. Experience, however, confirmed the truth that the working of responsible government with its emphasis on the principle of collective responsibility is not easy if there happen to be serious differences inside the Cabinet in ideas, perceptions, approaches to problems and suggestions made for their solutions among the different members. Ministers like Dr Shyama Prasad Mookerjee, Shri K. C. Neogy and Dr John Matthai in spite of their personal regard for the Prime Minister felt it constitutionally correct to leave the Ministry, in view of the fundamental conflict in outlook and approach that was

revealed to exist between them and the Prime Minister and other colleagues on certain important issues. The effective conduct of government requires a unity among those who are charged with the duty of conducting it. There may be clear currents of thought existing in the country. They may occasionally find eloquent expression, but such undefined and unorganized currents cannot by themselves create that strength which is necessary for operating the governmental machinery. A political party supplies the attraction and the strong bond which brings together men of the same persuasion, and continuously keeps them united.

Coalition Governments in National Emergencies. In times of great national peril when the very existence of the country is endangered by the threat of war or by a war which has actually broken out, party differences are naturally suspended. Every citizen is tuned up to attain only one ideal, namely, victory to the nation and its survival at all costs. Political hostilities are completely stilled in the face of dark calamities; a spirit of self-effacement and discipline is manifest in all ranks of leadership and coalition Governments are formed in order to enable the nation to tide over the emergency. That is how leaders of the Labour party, such as Mr Attlee, agreed to work under a sworn opponent of socialism, Mr Churchill, during the Second World War. Political life returns to normal as soon as the emergency is over; the coalitions are dissolved and parties resume their peaceful warfare in the political life of the country.

Importance of the Office of Prime Minister. In the parliamentary system the office of Prime Minister is of the greatest importance. He has been described as the keystone of the Cabinet arch. It is he who supplies the

connecting personal link to all the Ministers, gives rulings on occasions of disputes, operates as a co-ordinating force for different governmental activities and supplies that unifying influence which preserves the administrative system from contradictions and chaos. No Government can operate and thrive without an active chief. In England, when the King lost his powers as an active ruler the gap inevitably came to be filled in by the emergence of the office of Prime Minister. In India also, because the President is expected to be purely a formal and nominal ruler, the real initiative and authority in respect of the work of governance automatically devolve upon the leader of the Ministry, that is, the Prime Minister. It is he who presides over Cabinet meetings and suggests the distribution of portfolios amongst his colleagues. It is he who keeps a general supervision over the working of every important matter connected with the operation of the departments. If he happens to be a man of high intelligence, long experience, assertive temperament and a strong will, the influence of his personality will be felt in all aspects of the administration. It is even said that as long as he retains the confidence of his party and as long as his party retains the confidence of Parliament and the country, the amount of power and prestige that the Prime Minister enjoys is not surpassed even by the American President; because it is possible in the case of the American President that, not being a leader of the Legislature, he may be actually hampered in his work by a hostile Congress if the opposition party has won congressional elections. That cannot happen in the case of the Prime Minister because he combines in himself executive, legislative and national leadership.

THE PORTFOLIO SYSTEM. The operation of collective

responsibility is facilitated by the institution of what is known as the portfolio system in the working of the Cabinet. The work of administration of any department can be naturally divided into two categories. First, there are certain matters of routine and minor detail which may require the attention of the head of the department, but which are not important enough to be brought before the whole Council of Ministers. In the portfolio system, such matters are disposed of by the Minister in charge of the department in his individual discretion and judgement, though his action is taken in the name of the Government, and responsibility for that action is shared by all his colleagues. Secondly, there are important questions of principle and policy affecting every department. The Minister in charge may formulate his own scheme of reform and propose certain measures and innovations, but in such matters he cannot take any decision or action without prior consultation with and approval of the Prime Minister, and very often of the Cabinet. All important issues have to be submitted to and thrashed out by the whole body of Ministers. There is a free exchange of ideas amongst its members. Criticisms may be made and modifications suggested and ultimately the scheme emerges in a form which is acceptable to all. Then it becomes the combined obligation of the whole Ministry which is bound to stand or fall by it as a body.

SERIOUS DIFFERENCES AMONG MINISTERS. In this system, which matters are to be considered as minor and which are to be considered as major is left to be judged by the common sense of a Minister. There can be no hard and fast rule to bind him in this respect, because every issue will have to be judged on its own merits and in the context of the circumstances in which it arises. Difference of

opinion may arise about the Minister's interpretations, but usually it will not be difficult to remove them, because there is the affinity of a common party tie. Similarly on questions of principle, as the Cabinet is constituted by persons who are politically alike, serious cleavage of opinion is not very probable. There may be variations in the degree of emphasis, but they can be easily reconciled. However, the system does involve a very delicately balanced equipoise which may at times get disturbed and upset by honest miscalculations or honest differences. On exceptional occasions it may happen that a Minister cannot agree with the views of his colleagues or his colleagues may find it impossible to tolerate his notions and behaviour. He then has to resign his office and leave the Government with which he cannot work in harmony. The Prime Minister, if need be, can demand his resignation. The basic principle is that no violently discordant element can be tolerated in the innermost Council of the State which is charged with the responsibility of carrying on government. Sometimes on account of political immaturity and failure to grasp the spirit of the working of parliamentary government, an individual Minister may refuse to resign even when called upon to do so by the Prime Minister. He can then be dismissed by the President; but instead of resorting to this extreme step the constitutional practice that is often adopted is for the Prime Minister to tender the resignation of the whole Ministry including the recalcitrant Minister and then to form a new Ministry with all the same Ministers except the person from whom resignation was demanded. It is a clearly accepted principle that the Prime Minister has the power not merely to resign his office individually, but to tender the resignation of the whole Ministry irrespective of the inclinations of

the individual Ministers.

CONCENTRATION OF POWER IN THE CABINET. The Parliamentary Committee on the Machinery of Government (1918) described the main functions of a modern British Cabinet as being threefold: '(*a*) The final determination of the policy to be submitted to Parliament; (*b*) the supreme control of the national *executive* in accordance with the policy prescribed by Parliament; and (*c*) the continuous co-ordination and delimitation of the interests of the several departments.' Even in parliamentary democracy it is not Parliament which actually carries on the day-to-day work of government nor is it possible, or desirable, that it should do so. A legislative chamber consisting of a large number of members is not a competent instrument for strong executive action. But it can exercise a constant and vigilant control over the operations of that body in which is vested the ultimate direction of executive affairs. Parliament is fully empowered to exercise such a control in various ways.

It may be noted that with the growth of strong party organizations, the Cabinet has acquired in practice a very considerable influence, if not authority, over the Legislature. The party machinery imposes a strict discipline and solidarity amongst the members of the party and it is very difficult for the voice of dissident minorities within it to be effectively heard. As long as there is a strong party majority supporting the Cabinet it can assume almost dictatorial powers even against Parliament and a modern writer has gone to the length of describing this situation as a 'New Despotism'. All initiative in respect of legislation has come to lie with the Cabinet. The time and programme of the work of the Legislature is fixed in accordance with its convenience; it can even secure a

dissolution of the Legislature. There is no doubt that the blending of executive and legislative powers makes the position of the Cabinet and the Prime Minister extremely formidable. But it is also true that they can continue to be in the enjoyment of such an exceptional position only as long as the majority is willing to support them. As soon as the majority feels inclined to get rid of the 'despotism' it can successfully use the weapon of its voting strength to dislodge the Ministry. It is precisely in this process that the main principle of democracy is clearly exemplified.

THE PRESIDENT MUST BE KEPT INFORMED ABOUT MINISTERS' ACTIONS. The President has to make rules for the more convenient transaction of the business of the Government of India and for the allocation of portfolios to Ministers. He has, of course, no right to be present at Cabinet meetings or to preside over them. The allocation of portfolios is in actual practice effected by the Prime Minister. However, this rule-making power enables the President to be in close touch with the affairs of the Government and the work of the Ministry.

It shall be the duty of the Prime Minister (*a*) to communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation; (*b*) to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and (*c*) if the President so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council. This is a necessary provision because even a formal head of the State, because he is the head, ought

to have the fullest information about the way in which the administrative machine is functioning. In England all resolutions of the Cabinet together with the fullest information on all important points are communicated to the Sovereign and the same practice is adopted for India. After all, even a constitutional President has a duty to perform. He contributes a stabilizing influence to the State and advice coming from a man of such wide experience, exalted status and impartiality should prove very valuable to the Ministry though it may not bind it in any way. If the President finds that a decision in regard to an administrative matter concerning his department has been taken by an individual Minister without prior consultation with the Cabinet, the President has been given the power to refer that question for the consideration of the Cabinet. It was felt that such a power given to the President would amount to a breach of the privilege of the Cabinet to hold its own deliberations by itself, but it was pointed out that, in practice, such a power would actually be helpful in consolidating the principle of collective responsibility without adding in any way to the authority of the President or impairing the powers and position of the Prime Minister or of the Cabinet.

12

THE UNION LEGISLATURE: THE COUNCIL OF STATES (OR RAJYA SABHA)

Indian Legislatures not fully Representative till the Act of 1935. The importance of the Legislature in modern democracy and particularly in democracy of the parliamentary type has already been explained.[1] The growth in the representative character of the legislative chambers consequent on an increase in the number of their members and the introduction of adult franchise, and the growth in their powers have been identical with the advance of the democratic ideal and synchronous with the steady expansion of the democratic process in all directions. Before the Act of 1935, Legislatures in India did not satisfy those normal standards, the observance of which is necessary to give a representative character to a law-making body, nor were they endowed with that substance of powers which would have made them a real force in the country. Till the Montford Reforms they were merely small consultative bodies established more for the convenience of the rulers than of the ruled and functioning in a very limited measure and in a very limited sphere. After the introduction of provincial autonomy by the Act of 1935 the structure of the provincial Legislatures did undergo a great change, but the federal Legislatures contemplated by that Act were of a retrograde character. The lower chamber, which as a popular body

[1] Pt. II, ch. 9.

ought to be elected directly by the people, was under that arrangement to be elected indirectly by the provincial Legislatures voting in communal compartments; and the upper chamber was to be an assemblage of members partly nominated by the Government, partly nominated by the autocratic rulers of Indian States and partly elected by very narrow constituencies based on high property qualifications. It would have been a formidable congregation of all the reactionary vested interests in the country and a great impediment to national progress.

PARLIAMENT IN THE NEW CONSTITUTION. In the Constitution of the Republic of India the structure of the Legislatures, the method of their election and the powers with which they are invested are prescribed in accordance with the canons of a democratic polity. Theoretically speaking, the bicameral system may or may not be absolutely essential in a unitary State though there is practically no important State in which it does not exist; but it is considered to be absolutely essential in a federation because it enables the constituent units to be represented as units in the federal legislative structure. The Federation of India has, therefore, two chambers; the Constitution has provided that there shall be a Parliament for the Union consisting of the President and two Houses, to be known respectively as the Council of States and the House of the People. The President's position is peculiar. He is debarred from being a member of either of the two Houses and has himself been given an institutional status by being made an integral part of the Legislature. The study of any legislative chamber means the study of its constitution, constituencies, franchise and method of election, the position of the Speaker or chairman, its powers and functions, the privileges of members, proce-

dure of work, etc. These points will now have to be dealt with in detail, both in respect of the Council of States and of the House of the People.

CONSTITUTION OF THE COUNCIL OF STATES. The Council of States, or Rajya Sabha, is the Upper Chamber in the Indian Federation and corresponds to the Senate in the U.S.A. It is, of course, an all-India body and contains representatives from all parts of the Indian Union. Its total membership is prescribed to be 250, out of which not more than 238 are to be elected and the remaining twelve to be nominated by the President. The system of nomination which was widely prevalent during the days of British rule was condemned by Indian leaders as an affront to democracy, because more often than not, in the hands of foreign rulers, it degenerated into an instrument of political bribery and corruption. However, after the advent of independence the system has not been abolished. It is felt that in the atmosphere of political freedom, nomination on a very minor scale cannot have any mischievous or demoralizing effects; on the contrary its retention may prove beneficial to democracy because it can supply a quiet door through which can be attracted to public service men distinguished for their learning, experience and ability who may be quite willing to make their contribution to national work but who are averse to entering into the din and the hectic tussle of political electioneering or to indulging in the exploits of its demagogic fireworks. In the absence of nomination the valuable services of such eminent persons will be lost to public life. The nominated element, as provided for in the Constitution, is such a small fraction of the total strength of the Legislature that by themselves their vote will be negligible and ineffective and the importance of the

elective principle which is the basis of democracy will not be damaged even to a small extent. There are critics on the other hand who maintain that the principle of nomination in whatever small measure it may be introduced is fundamentally incompatible with representative democracy and the back-door admissions to a legislative chamber which it legalizes militate against the democratic technique.

DISTRIBUTION OF SEATS. The allocation among the different States of the Indian Union of the elective seats in the Council of States is as follows:

PART A STATES	TOTAL SEATS
1. Assam	6
2. Bihar	21
3. Bombay	17
4. Madhya Pradesh	12
5. Madras	27
6. Orissa	9
7. Punjab	8
8. Uttar Pradesh	31
9. West Bengal	14
Total	145

PART B STATES	TOTAL SEATS
1. Hyderabad	11
2. Jammu and Kashmir	4
3. Madhya Bharat	6
4. Mysore	6
5. Patiala & East Punjab States Union	3
6. Rajasthan	9
7. Saurashtra	4
8. Travancore-Cochin	6
Total	49

PART C STATES & GROUPS OF STATES	TOTAL SEATS
1. Ajmer 2. Coorg	1
3. Bhopal	1
4. Bilaspur 5. Himachal Pradesh	1
6. Delhi	1
7. Kutch	1
8. Manipur 9. Tripura	1
10. Vindhya Pradesh	4
Total	10
Total of all elective seats	204

These tables are from the Fourth Schedule of the Constitution as amended by the Presidential Order of 1950. The total number of members was 219 in 1955.

In the case of States specified in Part A and Part B of the First Schedule the representatives shall be elected by the Legislative Assemblies of those States in accordance with the system of proportional representation by means of the single transferable vote. The representatives of the States specified in Part C shall be chosen in such a manner as Parliament may by law prescribe. The twelve nominated members are intended to be persons who have special knowledge or practical experience in respect of such matters as literature, science, art and social service.

No Equality of Representation to the Units. It will be noticed that the status of equality of the component units which the upper chamber is specially intended

to signify in a federation has not been provided for in the Constitution and that every State is not allotted the same number of seats in the Council of States irrespective of its size and population. In the case of the American Senate this equality is deliberately emphasized, even the smallest State having the same number of representatives in the Senate as the bigger States. In the functioning of the Indian Constitution a few of the bigger States hold a substantial number of seats in the Council. They will play a decisive role in disposing of questions in which the interests of the smaller States are more directly involved and the final determination of which, in the opinion of the smaller States, ought not to be left merely to voting by majority. The very basis of a federal constitution is the safeguard that it offers against a possible, perhaps unintentional, tyranny of the majority over the minority, and that is ensured by the creation of an upper chamber in which States are represented as States on a footing of perfect equality with each other. Any encroachment attempted by the bigger States upon a smaller State could thus be resisted by an effective combination of the smaller States. The non-acceptance of the principle of equality in the allotment of seats in the Council of States is a serious derogation from the federal principle and is more in keeping with the atmosphere of the unitary system.

INDIRECT ELECTION. The Council of States will not be directly elected by the people; as stated above their members will be chosen by the State Legislative Assemblies which in their turn are directly elected. It is not an invariable rule that the upper chamber should be constituted on the basis of indirect election. The Senate of the U.S.A. and also the Australian Senate consist of persons who are directly elected by the electors in the respective

States to which a particular number of seats is assigned. The advantage that is attributed to an indirect election is that it avoids an unnecessary disturbance of the political life of the country which is caused by a multiplicity of large-scale elections, and also avoids the wastage that will be inevitably involved in the same body of electors being frequently called upon to exercise their franchise for the same purpose, with the same parties being in the field, and with similar programmes broadcast from time to time. After all, the upper chamber may not possess exactly the same prestige and concentration of powers which legitimately must be possessed by the popular lower chamber, and hence its election by a method which is removed by one degree from direct election is not calculated to do any harm. The disadvantage of such a system is that it takes away an important link between the elector and his representative and because the total number of electors is comparatively small it gives scope for unscrupulous manoeuvring and corruption.

A PERMANENT CHAMBER. The Council of States is a permanent body and is not subject to dissolution. The term of an individual member will be six years and one-third of the members shall retire every second year. The idea behind such an arrangement is to secure some continuity of legislative experience and of guidance to the administration in a democratic system in which authority is liable to change from party to party. The periodical retirement of a small fraction of members instead of a total dissolution of the whole chamber will save the Council both from staleness of outlook and loss of touch with the latest currents of thought, and also from that complete break with the immediate past which may follow as a consequence of a new party sweeping the

polls in a wholesale election. This is considered to be particularly necessary in the Council of States because as an upper chamber it will have to perform the duties of revision and delay.

VICE-PRESIDENT OF INDIA AS CHAIRMAN. As has been already stated, the Vice-President of the Union shall be the *ex officio* Chairman of the Council of States and preside over its meetings. The Council will also elect one of its members to be Deputy Chairman who can preside during the absence of the Vice-President either because he is acting as President or for any other reason. If at any sitting of the Council a resolution for the removal of the Vice-President or the Deputy Chairman from his office is under consideration, these officers even though present in the House, shall not preside over the sitting, and though they will be entitled to speak, and otherwise to take part in the proceedings of the sitting, they shall not be entitled to vote on such a resolution. It will be noted that the Council is not given the power to elect its own Chairman. The Chairman and the Deputy Chairman of the Council will get such salaries and allowances as may be fixed by Parliament by law.

DECISIONS BY MAJORITY. All questions at any sittings of the Council shall be determined by a majority of votes of the members present and voting, other than the Chairman. The Chairman or person acting as such shall not vote in the first instance, but shall exercise his casting vote in case the voting is equal. The quorum to constitute a meeting of the Council shall be one-tenth of the total number of members of the House, that is, twenty-five. If at any time during a meeting of the Council there is no quorum it shall be the duty of the Chairman either to adjourn the House or to suspend the meeting

until there is a quorum. The House can transact business notwithstanding any vacancy that may have arisen in its membership.

POWERS AND FUNCTIONS. The powers and functions of a Legislature in modern days have been explained in an earlier chapter.[1] The Council of States enjoys full legislative powers. Every Bill which has to be passed into an Act must receive its assent. No measure can be incorporated into the law of the land unless it has received sanction from the Council. It enjoys in this respect the same powers as are enjoyed by the House of the People. The Council can exercise control over the administration by moving resolutions or adjournments or votes of censure, or by putting questions and supplementary questions. Motions for adjournment must refer to definite matters of urgent public importance and of recent occurrence. Questions and supplementary questions are intended to elicit information in respect of important details in the routine of the administration. Lastly, the financial powers of the Council have to be understood. The upper chambers in unitary States are not invested with the same thorough control over the nation's purse as is invested in the lower chambers. Because of their narrow representative character and of the general conservative outlook that pervades all their thoughts and acts, they are regarded as inherently unfitted to exercise this power. The case of an upper chamber in a federation is, however, different. They are formed with a special purpose and the method of their formation is not such as would make them merely oligarchical chambers having only a remote acquaintance with popular sentiments and desires. In fact, the Senate in the United States stands as the very embodiment of

1 Pt. II, ch. 9.

the federal principle and possesses complete equality of status and power with the House of Representatives. Circumstances have actually made it the most important body in the governmental machine. The Council of States cannot be put on a par with the American Senate either in regard to its composition or in regard to its prestige, and its inferiority is reflected in the lesser financial powers that are conferred on it as compared with those of the House of the People. No Money Bill can originate in the Council of States. Amendmends made by the Council in a Money Bill, which is passed by the House of the People and is submitted to it for its approval, are not binding upon the House. The Council must return such a Bill within fourteen days of its receipt from the House, and if it is not so returned it can be passed by the House as if it were passed by the whole Parliament. Demands for grants are not submitted to the Council; voting of public expenditure is an exclusive privilege conferred upon the House of the People.

QUALIFICATIONS OF MEMBERS. A person shall not be qualified to become a member of the Council of States unless he is a citizen of India, and is not less than thirty years of age. Other qualifications of membership may be prescribed by Parliament. No person can be simultaneously a member of the Council and also of the House of the People or of a State Legislature. No person can be a member of the Council if he holds any office of profit under the Government of India or any State Government; being a Minister either for the Union or for a State will not, however, be deemed to hold an office of profit; Parliament may also by law declare other offices to be such as would not disqualify their holders from being members. Persons of unsound mind, undischarged

insolvents, and persons who are not citizens of India are debarred from membership of the Council.

13

THE UNION LEGISLATURE: THE HOUSE OF THE PEOPLE (OR LOK SABHA)

Importance of the House. The lower House of Parliament is called the House of the People, or Lok Sabha, and it corresponds to the House of Commons in England. As a representative chamber elected by all the constituent States of the Indian Union on the basis of adult franchise, this House has naturally become the centre of political gravity in Indian politics. Popular opinion throughout the country will be mirrored in and by the collective attitude displayed by its members on all matters of public interest. It can be referred to as the visible embodiment in India of the doctrine of the sovereignty of the people.

Proper size of a Legislature. This House is bigger in size than the Council of States and unlike the latter is elected directly by the people. The size of a Legislature is one important factor, among others, in determining its representative character and also its usefulness. If the number of members is too small, all shades of public sentiment cannot get an opportunity of having their spokesmen elected, and individual constituencies will be too bulky to allow any personal touch between the voter and the person for whom he has voted. Both these defects will mean a considerable dilution of the democratic idea. On the other hand, the Legislature cannot be allowed to become too unwieldy a body with a member-

ship going up to, say, a thousand or a couple of thousand. It is appropriate that a chamber which is meant for deliberation and discussion should contain all the important elements in the country's thought; otherwise the decisions that it arrives at may be one-sided, ill-informed and incorrect. It is, however, equally true that the deliberation ought to be held by responsible persons who are able to judge issues in all their bearings and give cool consideration to the problems presented to them. They must also be able to cultivate personal acquaintance if not intimacy with each other and develop that corporate sense which is essential to give the necessary degree of coherence to their policies in the national interest. The atmosphere inside the chamber must definitely be such as will bring about these results. Excessive numbers would reduce the Legislatures to mass meetings. Their numbers must, therefore, be restricted, care being taken at the same time to see that they do not fall below a reasonable level.

CONSTITUTION OF THE HOUSE. The Constitution has laid down that the House of the People shall consist of not more than five hundred members directly elected by the voters in the States. For the purpose of elections to the House of the People, States shall be divided, grouped or formed into territorial constituencies, and the number of members to be allocated to each such constituency shall be so determined as to ensure that there shall be not less than one member for every 7,50,000 of the population and not more than one member for every 5,00,000 of the population. The ratio between the number of members allotted to each constituency and the population of that constituency shall as far as possible be the same throughout the territory of India. Upon the completion of each census, the representation of the several territorial consti-

tuencies shall be readjusted; the authority which shall do it and the manner in which it should be done will be determined by Parliament by law. This healthy provision of elasticity makes it impossible for any constituency to become unrepresentative and out of date as happened in England before the Reform Act of 1832.

It will be noted that a maximum limit has been laid down for the numerical strength of the House. The fixing of such a limit at 500 and simultaneously prescribing that there should be not less than one member for every 7,50,000 of the population is bound to create difficulties if there should be a substantial increase in the population. The two conditions would then be found to be incompatible with each other and, being incapable of fulfilment at the same time, either the one or the other would have to be abandoned. Realizing this position, the Constitution was amended in 1953 and the requirement that there must be not less than one member for every 7,50,000 of the population was dispensed with. The maximum limit of 500 was retained, so that with every growth in population figures the number of seats in the House of the People will not have to increase.

In accordance with the power given to Parliament to make provision by law for carrying out, whenever necessitated by changes in population, readjustment of representation granted to territorial constituencies, that body has passed two Acts called the Representation of the People Acts. In the Act that was passed in 1950 the following allocation of seats to the different States has been described and the total number of seats in the House of the People has been fixed to be 496 (besides the nominated members of the Anglo-Indian community, if any, not exceeding two).

States in Part A		States in Part B		States in Part C	
1 Assam	12	1 Hyderabad	25	1 Ajmer	2
2 Bihar	55	2 Jammu and Kashmir	6	2 Bhopal	2
3 Bombay	45	3 Madhya Bharat	11	3 Bilaspur	1
4 Madhya Pradesh	29	4 Mysore	11	4 Coorg	2
5 Madras	75	5 Patiala & East Punjab States Union	5	5 Delhi	4
6 Orissa	20	6 Rajasthan	20	6 Himachal Pradesh	3
7 Punjab	18	7 Saurashtra	6	7 Kutch	2
8 Uttar Pradesh	86	8 Travancore-Cochin	12	8 Manipur	2
9 West Bengal	34			9 Tripura	2
				10 Vindhya Pradesh	6

In regard to the territories in Part D of the First Schedule, that is, the Andaman and Nicobar Islands, Parliament has already decided that there should be one nominated representative for them in the House of the People.

Period of Tenure. The tenure of the House of the People shall be five years from the date appointed for its first meeting and no longer; the expiration of this period of five years shall operate as a dissolution of the House; the House may also be dissolved earlier than the period of five years. While a Proclamation of Emergency is in operation, the period of the tenure of the House may be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate. But there is no limit to the maximum period of extension. The period of five years is prescribed because it is generally felt to be not too short nor too long to enable members of Parliament to perform their duties in a manner which is fairly stable and yet which has to remain constantly responsive to the trends of public

opinion in contemporary life. It may be interesting to add by way of contrast that in the presidential system that prevails in the U.S.A. the tenure of office of the lower house, that is the House of Representatives, is only the too short period of two years: it cannot be extended beyond that period, nor can the House be dissolved earlier than that period under any circumstances.

INTRODUCTION OF ADULT FRANCHISE. The House of the People is to be elected by adult franchise. It is a very bold step taken by the Constitution and some critics have even described it as a leap in the dark. All citizens in the country, men and women, above the age of twenty-one and not otherwise disqualified on grounds of lunacy, insolvency, crimes against the State, etc., are given the right of voting regardless of any other qualification like literacy, property, or income. Franchise in India, as in other countries during the nineteenth century, was very much restricted before the Act of 1935. It depended to a great extent on the possession of wealth, landed estates and social status. The privileged position of that class of society has been swept away in the new dispensation.

ARGUMENTS AGAINST ITS INTRODUCTION. It must be admitted that the introduction of adult franchise has caused considerable misgivings not only to persons whose outlook on life may be considered to be generally conservative, if not reactionary, but even to quite a few distinguished leaders who have always advocated democracy and popular freedom. It is argued that government is a difficult job which cannot be properly executed except by the possession of a minimum competence of the right type; persons who are absolutely illiterate and ignorant cannot understand the complications of the political machine, and the significance and importance of the

right to vote which is conferred on them. They will not be able to exercise their franchise judiciously and intelligently, because their minds have not been trained to discriminate between the desirable and the undesirable in party programmes. They will be susceptible to the influence of passion, prejudice, superstition and appeals to their emotions and will fall an easy prey to the unscrupulous propaganda and machinations of political adventurers and opportunists. To vest the vital power of creating a Government in a Legislature which will be elected by the votes of ignoramuses whose ignorance and other weaknesses can be easily and systematically exploited by ambitious politicians for their own selfish ends cannot but lead to disaster of the first magnitude. The minimum that should be expected of a voter is that he can read and write. At least, the qualification of literacy seems indispensable on that account.

AGREEMENTS IN ITS FAVOUR. That there is considerable truth in this argument and justification for the misgivings entertained cannot be denied. Adult franchise in the existing backward condition of the people of India is certainly a risk. But on the whole, weighing all things together, it is much better that the risk is taken than that it is avoided. The task of government is undoubtedly complex and difficult and requires skill and knowledge for handling it, but there is a gradation in the skill and knowledge that is required for this purpose in accordance with the graded difficulties and responsibilities carried by governmental functionaries. Ministers, Legislatures and voters stand in a descending scale of direct participation in the administration of the State, though the importance of none of them can be minimized. It cannot be overlooked that in a limited sense one part of the voter's

function comes to an end when he has given his vote; thereafter he has to keep a general watch over the way in which his representatives are behaving. It is not, therefore, necessary that for the performance of this comparatively simple function he must be a learned man. Even mere literacy is not much of a qualification, because the mechanical capacity to read or write words without properly comprehending their significance does not by itself lead anywhere. What is required is that strong practical common sense and a capacity to grasp things when they are explained which can, and often does, exist in spite of illiteracy. There is hardly any reason to imagine that the average Indian living in rural areas is so profoundly backward and impervious to any intellectual influence that he will not be able, if properly tackled and guided, to get a broad idea of the nation's problems, and to choose the right candidates for solving them.

Its Adoption desirable. The responsibility for making adult franchise a success really lies with politicians and party leaders who must make a special effort to educate the electors and completely subordinate their personal ambitions and aspirations to the larger good of the nation as a whole. After all, even democracy is not a perfect form of government because the men who make it are not perfect. It is possible that elections on the basis of adult franchise may exhibit some sordid manifestations of human ingenuity and character, when they take place in the present stage of educational backwardness, low civic morals and political immaturity in India. Yet, the mere imposition of the qualification of literacy will not improve matters because it will not thereby automatically raise the standard of intelligence or knowledge of the voter. The prescribing of any other qualification based on property

or income would amount to perpetuating the existing inequalities in the social system and, ironically enough, tend to sanctify those class distinctions which it is the aim of democracy to wipe out. It is an old fallacy to identify wealth with wisdom and money with merit.

The conclusion seems irresistible that though adult franchise does involve grave dangers in the existing situation of the country and that it would be suicidal to ignore those dangers and not to take adequate steps to counteract them by ensuring as far as possible the purity of elections, yet it is in keeping with the spirit of the times and the democratic ideal that the danger should be deliberately faced and the principle incorporated in the Constitution. History has shown that even in free countries the capacity of the people to rule has never been tested and satisfactorily ascertained at any one particular point of time or stage in their political progress. The transfer of power to them or the acquisition of power by them did not wait because of their ignorance and other disabilities because it would then have had to wait indefinitely. It could even be said that power in their hands has itself been an effective instrument for their advancement and uplift and has contributed a more vigorous tempo to the creation of a new social and economic order.

IMPORTANCE OF THE OFFICE OF SPEAKER. The conduct of business in a Legislature is controlled by its president who may also be designated as Chairman or Speaker. In the case of the House of the People he is designated as Speaker. The election of its own Speaker has been an important and time-honoured privilege of the House of Commons. The historical evolution of this office is interesting. From being the spokesman and leader of his colleagues and a channel of communication between them

and the Sovereign, the Speaker has now come to be a non-party dignitary vested with all the intricate functions and powers that are necessary to guide the deliberations of a democratic legislative chamber. Constitutionally, the Speaker's or president's position carries great responsibilities with it. He presides over the meetings of the body and can adjourn them. He maintains order at the time of discussion, gives his rulings on disputed points of procedure, and has to dispose systematically of the business on the agenda. He maintains the dignity of the House by controlling members in their use of language; he has to protect carefully the privileges of the House from any outside encroachment. He admits questions and grants permission to move adjournments. In case voting is equal on any issue, he gives his casting vote. In short, to have its own elected president is one of the most cherished and one of the most useful privileges enjoyed by a Legislature.

HIS ELECTION. The House of the People has to elect one of its own members to be its Speaker and another member to be the Deputy Speaker, and to fill in the vacancies in these offices whenever they occur for any reason. A member holding the office of Speaker or Deputy Speaker shall vacate his office if he ceases to be a member of the House of the People, or he may at any time resign his office, or he may be removed from his office by a resolution of the House of the People passed by a majority of all the members of the House; no resolution for his removal shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution. Whenever the House of the People is dissolved the Speaker of the House shall not vacate his office until immediately before the first meeting of the House of the

People after the dissolution. While the office of the Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker and if at that time the office of the Deputy Speaker is also vacant, they will be performed by a member of the House who is appointed by the President for the purpose. If both the Speaker and the Deputy Speaker are at any time absent from the House such person as may be determined by the rules of procedure of the House shall act as Speaker. The rules have actually provided that at the commencement of Parliament, or from time to time, the Speaker shall nominate from amongst the members of Parliament a panel of not more than six Chairmen, any one of whom may preside over Parliament in the absence of the Speaker and the Deputy Speaker when requested to do so by either of them. At any sitting of the House of the People, while any resolution for the removal of the Speaker or the Deputy Speaker from their office is under consideration, they shall not preside even though they may be present. The Speaker will have the right to speak and otherwise take part in the proceedings of the House while such a resolution is under consideration, and shall be entitled to vote only in the first instance, but not give any vote in the case of an equality of votes.

All questions at any sitting of the House of the People shall be determined by a majority of the members present and voting, other than the Speaker or the person acting as Speaker. The Speaker or the person so acting shall not vote in the first instance, but shall exercise a casting vote in case of an equality of votes. The quorum to constitute a meeting of the House of the People shall be one-tenth of the total number of members of the House, that is, fifty. If at any time during the meeting of the

House there is no quorum, it shall be the duty of the Speaker either to adjourn the House or to suspend the meeting until there is a quorum. The House can act notwithstanding any vacancy in its membership.

QUALIFICATIONS AND DISQUALIFICATIONS OF MEMBERS. A person shall not be qualified for election to a seat in the House of the People unless (*a*) he is a citizen of India; (*b*) he is not less than twenty-five years of age; and (*c*) he possesses such qualifications as may be prescribed in that behalf by any law made by Parliament. No person shall be a member of both Houses of Parliament, and a person who is chosen as a member of both Houses shall have to vacate his seat either in one House or the other. No person shall be a member both of Parliament and of a House of the Legislature of a State, and if a person is chosen a member both of Parliament and a State Legislature, then he will have to decide within a prescribed period of time in which particular body he wishes to retain his seat; if no such decision is taken within the prescribed time and if the member has not resigned his seat in the State Legislature then his seat in Parliament shall be declared to be vacant. A seat in Parliament may be vacant if a member becomes subject to any of the disqualifications mentioned in the Constitution, or if he resigns his seat, or if he has remained absent without the permission of the House from all meetings of the House for a period of sixty days.

A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament, (*a*) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder; for this purpose, holding office as a Minister

either of the Union or of a State will not be deemed to be holding an office of profit; (*b*) if he is of unsound mind and stands so declared by a competent court; (*c*) if he is an undischarged insolvent; (*d*) if he is not a citizen of India or has voluntarily acquired the citizenship of a foreign State, or acknowledges allegiance or adherence to a foreign State; (*e*) if he is disqualified by, or under, any law made by Parliament. Parliament has already enacted a law declaring that holding one of the following offices will not constitute a disqualification for membership of Parliament: a Minister of State, a Deputy Minister, a Parliamentary Secretary or a Parliamentary Under-Secretary. These offices fall, of course, into the category of Ministerships and are essentially political in their nature, and their exclusion from the list of disqualifications is not only appropriate, but quite essential.

If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications, the question shall be referred for the decision of the President, and his decision shall be final; but before giving any decision on any such question the President shall obtain the opinion of the Election Commission and shall act according to such opinion. The reference to the President will thus merely be a formality. The final decision in such disputes will actually be taken by the Election Commission and will be binding on all the parties concerned.

Assurance of Two Sessions every Year. The Houses of Parliament shall be summoned to meet twice at least in every year, and six months shall not intervene between their last sitting in one session and the date appointed for the first sitting in the next session. This provision guarantees a minimum of at least two sessions of Parlia-

ment during a year and excludes the possibility of the Legislature not being allowed to function for an inordinately long period of time at the instance of an unscrupulous President or Prime Minister. In fact, in democratic polity the sessions of the Legislature must be almost continuous, because they have to discharge the tremendous responsibilities that are involved in the operations of a modern Welfare State.

ADDRESS BY THE PRESIDENT. The President may, from time to time, summon the Houses, or either House, at such time and place as he thinks fit; prorogue the Houses; and dissolve the House of the People. This power will, of course, be exercised in actual practice by the Prime Minister on whose advice the President will have to act. The President may address either House of Parliament or both Houses assembled together, and require for that purpose the attendance of members. He may also send messages to either House of Parliament with respect to a Bill pending in Parliament or otherwise, and the House to which any such message is sent shall consider the matter as quickly as possible. This right to send messages is a feature of the American presidential system which because of its rigid insistence on the separation of powers provides no common meeting ground between the Executive and the Legislature, and has been incorporated in the Indian Constitution even though it is of the parliamentary type. But in actual practice here as elsewhere the address or the message given by the President is expected to be given only on the advice of the Ministers.

At the commencement of the first session after each general election to the House and at the commencement of the first session of each year the President shall address both Houses of Parliament assembled together and inform

Parliament of the cause of its summons.[1] Time shall be allotted in each House for discussion of the matters referred to in such addresses and such a discussion shall take precedence over any other business of the House. This power corresponds to the power of the King of England to deliver 'the speech from the Throne'. This address by the President will, in fact, be prepared for him by the Ministry and will be an authoritative pronouncement of the policy of the Government in regard to all important matters whether domestic or foreign. It may contain a general survey of the affairs of state in the past year with particular reference to the steps that may have been taken by the Government to solve the many difficult problems that may have faced the country, and contain indications of concrete proposals for meeting similar problems in the future. Because the address is thrown open for discussion, members of the Legislature get the opportunity of expressing their opinion on the general working of the administrative system and the different policies that may have been adopted by the Government. Such a discussion in which members of the different parties, and particularly the opposition parties, vigorously participate is very helpful in enabling the Ministry to form a correct judgement of the reactions of public opinion to the manner in which it has been actively functioning. Economic, financial, political and other important problems necessarily figure in such debates and discussions.

Oath of Allegiance. Every member of either House of Parliament shall, before taking his seat, take an oath or make an affirmation before the President or some other person appointed by him that he will bear true faith and allegiance to the Constitution of India as by law estab-

[1] The Constitution (First Amendment) Act, 1951.

lished and that he will faithfully discharge the duty upon which he is about to enter. If a person sits or votes as a member of either House before he has taken such an oath or made such an affirmation or when he knows that he is not qualified or that he is disqualified for membership of the body, or that he is prohibited from becoming a member by the provisions of any law made by Parliament, he shall be liable to pay a penalty of Rs 500 for every day on which he so sits.

POWERS AND FUNCTIONS. The powers and functions of the House of the People are to be considered in the light of the classification that has already been given.[1] No Bill can be deemed to have been passed into an Act having force of legality unless it is passed by the House. All legislation must, therefore, pass through this body. It can also exercise control over the administration by means of resolutions, votes of censure, motions of adjournment and questions and supplementary questions addressed by members to Ministers. It can thus effectively establish its supervising and critical authority over departmental administration and give an indication of its political predilections. In all these respects the powers of the House and of the Council of States are equal and co-ordinate.

In respect of finance, however, the superior authority of the House of the People is clearly indicated. The voting of expenditure for different departments of Government is vested entirely in the House; demands for that purpose are *not* submitted to the Council. Money Bills must be initiated only in the House and not in the Council; a Money Bill passed by the House and submitted to the Council must be returned by the latter within fourteen days of its receipt of the Bill, with or without amend-

[1] Pt. II, ch. 9.

ments; and even the amendments suggested by it may or may not be accepted by the House. For all practical purposes, such Bills become law without the Council having any real power of amending or altering their provisions.

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PRIVILEGES OF MEMBERS OF THE LEGISLATURE

A member of a Legislature is a public servant in the larger sense of the term, though he retains his non-official character and status and is not subject to bureaucratic discipline. For the proper performance of his duties he must be allowed to enjoy certain privileges because their enjoyment is essential for and inseparable from that performance. For instance, it is obvious that a member of the Legislature must have complete freedom of speech on the floor of the House or in any of its Committees, and also in the publication of speeches and other proceedings for the information of the public. In the absence of such a privilege no elected representative would be able to perform adequately his duty of examining legislative proposals or administrative acts and of giving expression to the opinions and sentiment of the electors whom he represents.

Freedom of Speech. There are provisions in the Indian Constitution defining some of the privileges to which members of the Legislature shall be entitled. It is laid down that subject to the provisions of the Constitution and to the Rules and Standing Orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament. No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any of its Committees; no person shall be so liable in respect of the

publication of any report, paper, votes or proceedings by or under the authority of any House.

This privilege cannot, of course, mean an unrestricted licence to say anything or to use any language regardless of the dignity of the House. The Rules of Procedure are intended to regulate this freedom. For instance, it is laid down in the Rules that the speech of a member must, in the opinion of the Speaker, be relevant to the matter before the House, must not contain offensive expressions, must not be made to wilfully obstruct the business of the House, must not make a personal charge against a member, must not utter treasonable or defamatory words, must not refer to any matter on which judicial decision is pending, and so on.

Other Privileges to be Prescribed by Parliament. In other respects the powers, privileges and immunities of each House of Parliament and of its Committees shall be such as may from time to time be defined by Parliament by law; they are not prescribed in the Constitution but are left to be determined by popular representatives who will have actual experience of the working of the political machine, and may be changed according to the felt needs of particular situations by an amendment of the Parliamentary law. The merit of such an arrangement is its elasticity. Until Parliament has passed a law defining the privileges of members, it is laid down that members of the Indian Legislatures will be entitled to those privileges that were enjoyed by the House of Commons in England at the commencement of the Constitution. It must be added that no special immunity or exemption from the operation of the ordinary law of the land is intended to be conferred on legislators; no special discrimination in this respect is to be permitted in their favour as compared with any

other citizen. The only idea is to facilitate the proper discharge by them of their difficult responsibilities as spokesmen of the public will. There is no question of legislators being elevated into a higher political or social order arrogating to themselves any special civic rights which are denied to their masters, the ordinary citizens of the nation.

STANDING COMMITTEE OF PRIVILEGES. A Standing Committee of Privileges can be and is set up by Parliament and by the State Legislatures to determine whether there has been any breach of parliamentary privilege in any case referred to it, and to report to the House with recommendations for action. An inquiry into the conduct of a member may also be ordered by Parliament if that conduct is considered to be inconsistent with a member's dignity and responsibility. A special *ad hoc* committee of the House may be set up for that purpose and action may be taken on its recommendations. Such an inquiry by a special committee was ordered to be held by Parliament in June 1951 to inquire into the activities of a member in connexion with some of his dealings with a business organization in Bombay. The committee unanimously reported two months later that the conduct of the member concerned was derogatory to the dignity of the House and inconsistent with the standards which Parliament is entitled to expect from its members. Parliament considered the report and desired to pass a resolution expelling the member; but while the resolution was being discussed and before it could be adopted, the member tendered resignation of his membership of Parliament. The resolution as ultimately passed only stated that the member deserved to be expelled from the House.

SALARY AND ALLOWANCES. An important privilege to

which a legislator ought to be entitled is the payment to him of adequate allowances and salary as long as he holds his seat in the Legislature. This is a comparatively recent innovation in constitutional practice and was introduced in England as late as 1911. As long as service in the Legislature was entirely honorary, persons of modest means did not find it possible to aspire to membership; being engaged most of the time in different occupations which gave them their livelihood, they could not get the necessary leisure to pursue parliamentary activities. If this handicap existed even when the police concept of the State, with its insistence on *laissez-faire* and non-interference, dominated political thought, it became all the more prominent and pronounced with the advent of the Welfare State.

Membership of a Legislature in a modern democratic State is no longer a sort of responsible but easy pastime for the intelligent and privileged few, to be indulged in during spare hours. It has now become a whole-time and exacting job requiring the undivided attention and energy of the members, consequent on the enormous increase in the functions of government in every sphere. The Legislature has to be almost continuously in session throughout the year and its sittings cover a duration of several hours every day. Persons devoid of independent means of subsistence would be automatically excluded from this opportunity of public life, because, after entering the Legislature they would have to give up the gainful employments in which they were engaged, and then face the dismal probability of starvation.

It would be a mockery of democracy if a situation so developed that only men of wealth and leisure could afford to be members of the Legislature. The apparent equality

of opportunity to all citizens to contest elections and to function as legislators would be an illusion in a society based on glaring inequalities of wealth and income. In order to make that equality real, at least to a certain extent, provision is now made in all advanced countries for payment to members of the Legislature not only of allowances but regular salaries, so that they can be free from the worry and anxiety of having to earn a living at those times when they are called upon to perform their public duties. The salary is not intended to be in the nature of an income earned by a career; it is rather a living wage which should suffice to meet the normal requirements and responsibilities of a legislator's life, and is paid only during the period of his membership.

Following the salutary precedent of advanced democratic countries, the Indian Constitution has provided for payment of salaries and allowances to members of Parliament and of the State Legislatures. They are to be determined by law by the respective bodies from time to time. Until such laws were passed, such allowances and salaries were to be given to members of Parliament as were given immediately before the commencement of the Constitution to members of the Constituent Assembly of the Dominion of India. According to an Act passed by Parliament in 1953, a member of Parliament, whether of the House of the People or of the Council of States, gets a salary of Rs 400 per month subject to tax and an allowance of Rs 21 per day whenever he attends sessions of Parliament. He is also entitled to a free first class railway pass for travelling by any railway to any part of India.

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PROCEDURE OF WORK IN THE LEGISLATURE

Purpose of Framing Rules. Institutions are established to advance particular ideals and every effort has to be made to enable them to realize those ideals in actual practice. With that end in view, their constitutions are elaborately framed, the fundamentals of their being are defined, and the broad outlines of their structure are clearly drawn. However, there are a number of minor, variable but necessary details of day-to-day functioning which have to be regulated to ensure smooth and efficient administration but which are too insignificant to be incorporated in the Constitution. The latter therefore contains provisions conferring power on the relevant authorities to frame rules and regulations for the daily conduct of governmental business. They can be modified from time to time as circumstances demand. They are ancillary to the purpose of the Constitution and must not be inconsistent with it either in letter or in spirit; they serve as useful supplements to fill in the small gaps in administrative working.

Rules Framed by Parliament. The Indian Parliament has been given the power to make rules for regulating its procedure and for the conduct of its business, subject to the provisions of the Constitution. Such rules are intended to enable the House to finish its business with expedition and to avoid confusion and wastage of time. They must assure to the Opposition the right to criticize the Government and to express its opinion with complete freedom.

Standing Orders may also be passed by each House in regard to its procedure. The Rules and Standing Orders are passed by resolutions of the House and may be amended or suspended by a majority vote of the House at any time. No Rule or Standing Order can be framed in such a manner that it violates any provisions of the Constitution including a fundamental right; if it does so, the Courts have the power to declare it void. A few illustrations may be given to explain how even comparatively small details of conduct are covered by the Rules: it is laid down that a member shall enter and leave the House with decorum, that he shall not cross the House irregularly, that he shall not read any book or newspaper while the session is in progress, that he shall not interrupt any member while he is speaking, that when he speaks he shall address the Speaker, and so on.

RULES FOR JOINT SITTINGS. The President, after consultation with the Chairman of the Council of States and the Speaker of the House of the People, will make rules of procedure with respect to joint sittings of both the Houses. At a joint sitting the Speaker of the House of the People shall preside, or, in his absence, such person as may be determined by the Rules of Procedure.

No discussion shall take place in Parliament with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties except when a motion is made praying for his removal. The business in Parliament shall be transacted in Hindi or in English. However, the Chairman of the Council of States or the Speaker of the House of the People may permit any member, who cannot adequately express himself in Hindi or English, to address the House in his mother-tongue. The option to speak in English will be permitted for a

period of fifteen years from the commencement of the Constitution, and unless Parliament by law otherwise provides, it shall automatically disappear after the expiration of that period.

The validity of any proceeding in Parliament shall not be called in question on the ground that there was irregularity of procedure. No officer or member of Parliament in whom powers are vested for regulating procedure in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

The following is a brief account of the procedure of work in Parliament as prescribed by the Constitution and by Rules of Procedure passed by Parliament itself.

A. Procedure in Miscellaneous Matters

Summons for meetings. The time and place for the meeting of the Central Legislature are fixed by the President. A summons to attend the session is issued to each member by the Secretary of the Legislative Chamber.

Oath and Speaker's election. If a Legislature is meeting for the first time after new elections, its members are first of all called upon to take the oath. Immediately thereafter they proceed to elect their Speaker and then their Deputy Speaker. Both these elections are not finally valid until they have been approved by the President.

At the commencement of each session the Speaker must nominate from among the members a panel of not more than six Chairmen.

In the absence of the Speaker, the Deputy Speaker presides. If both are absent they can request any one of the panel of Chairmen to preside over the meeting.

Allotment of days for business. The Speaker allots definite days for the transaction of non-official business.

A list of business, or agenda, is dispatched to each member before the commencement of the session.

Quorum. One-tenth of the total membership of a House shall form the quorum for a meeting.

Questions. The first hour of every meeting shall be available for asking and answering questions. Not less than ten clear days' notice is required to be given for a question and it must also specify the designation of the Minister to whom it is addressed. A member who desires an oral answer to his question shall distinguish it by an asterisk; otherwise a written answer will be given. Not more than three asterisked questions can be asked by any member on any one day; questions in excess of three shall receive written answers. A question may be asked for the purpose of obtaining information on a matter of public importance and shall not contain statements, unnecessary arguments, inferences, imputations, etc. The Speaker can disallow a question. Any member may put supplementary questions for the purpose of further elucidating any matter of fact. A short-notice question may be admitted by the Speaker in urgent cases.

Adjournment motions. Leave to move an adjournment motion for the purpose of discussing a definite matter of urgent public importance must be asked immediately after questions have been answered. If more than twenty-five members rise in support, the Speaker intimates that the matter will be taken up for discussion at 4 o'clock in the afternoon. The debate must terminate at 6-30 o'clock and thereafter no question in respect of that motion shall be put.

Resolutions. A member who wishes to move a resolution must ordinarily give fifteen clear days' notice. The resolution must pertain to a subject of general public

interest and may be disallowed by the Speaker. Amendments can be moved by any member to a resolution. Non-official resolutions can be taken only on days allotted for non-official business. Their order of priority is determined by ballot.

Motions of no-confidence. Such motions can be moved to express want of confidence in a particular Minister or Ministers, but written notice of them must be given. Leave to move the motion will be taken to have been granted by the House if not less than thirty members rise in their seats to support the granting of the leave.

Personal statement by a Minister. A member who has resigned as Minister may make a personal statement or explanation of his resignation after question time; there will be no debate on statements which have been so made.

B. Legislative Procedure in Respect of Bills

ORIGINATING AND LAPSING OF BILLS. Excepting Money Bills and other Financial Bills, a Bill may originate in either House of Parliament; a Bill shall not be deemed to have been passed unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed to by both the Houses. A Bill pending in Parliament shall not lapse by reason of the prorogation of the Houses. A Bill pending in the Council of States which has not been passed by the House of the People shall not lapse on the dissolution of the House. A Bill which is pending in the House of the People or which, having been passed by that House, is pending in the Council of States, shall lapse on a dissolution of the House of the People.

Following the democratic practice in other countries, the sole right of initiation of any Bill concerning money

matters or containing financial provisions is vested in the chamber of the Legislature which is directly elected by the people by adult franchise.

Joint Sittings. If after a Bill has been passed by one House and transmitted to the other House (*a*) the Bill is rejected by the other House; (*b*) the Houses have finally disagreed as to the amendment to be made in the Bill; or (*c*) more than six months have elapsed from the date of the receipt of the Bill by the other House, without the Bill being passed by it, the President may notify to the Houses his intention to summon them to meet in a joint sitting for the purpose of deliberating and voting on the Bill. (This does not of course apply to a Money Bill.) If at a joint sitting of the two Houses which has been summoned by the President the Bill is passed by a majority of the total number of members of both the Houses present and voting, with the amendments, if any, accepted by them, it shall be deemed to have been passed by both the Houses. Thus provision has been made for a solution of the conflicts between two chambers whose powers in almost all respects are co-ordinate and who may find themselves in disagreement with each other on particular issues of public importance.

Money Bills and the Upper House. It is an invariable practice of the parliamentary system that Money Bills originate only in the lower or popular House and not in the upper chamber. Consistently with this salutary practice it is laid down in the Constitution that a Money Bill shall not be introduced in the Council of States. However, such a Bill, after it has been passed by the House of the People, shall be transmitted to the Council for its recommendations, and the Council of States must within a period of fourteen days from the date of its receipt of the

Bill return the Bill to the House of the People with its recommendations; the House of the People may accept all or any of the recommendations of the Council of States and in that case the Bill will be deemed to have been passed by both the Houses with the amendments so recommended and accepted; or the House may reject all or any of the recommendations of the Council, and in that case the Money Bill will be deemed to have been passed by both Houses in the form in which it was passed by the House of the People, without any of the amendments recommended by the Council. If a Money Bill passed by the House of the People and transmitted to the Council of States for its recommendations is not returned to the House within the period of fourteen days, it will be deemed to have been passed by both Houses at the expiration of that period in the form in which it was passed by the House. The supremacy of the House of the People in respect of Money Bills is thus really established.

MEANING OF A MONEY BILL. A Bill will be considered to be a Money Bill if it contains only provisions dealing with (*a*) the imposition, abolition, remission, alteration or regulation of any tax; (*b*) the regulation of the borrowing of money or giving of any guarantee by the Government of India; (*c*) the custody of the Consolidated Fund or the Contingency Fund of India; (*d*) the appropriation of monies out of the Consolidated Fund; (*e*) the declaring of any expenditure to be expenditure charged on the Consolidated Fund; (*f*) the receipt of money on account of the Consolidated Fund or the Public Account; (*g*) any matter incidental to all the above. If any question arises whether a Bill is a Money Bill or not, the decision of the House of the People on that issue shall be final.

It will be seen that in accordance with this provision a

Bill shall be deemed to be a Money Bill *only* if it contains any of the matters in the foregoing list, that is without there being introduced in it any other subject or purpose. This will prevent the House of the People from turning even ordinary Bills into Money Bills by adding to them some financial clause or clauses and thus making it impossible for the Upper House to amend them.

THE PRESIDENT'S ASSENT TO BILLS. After a Bill has been passed by the Houses of Parliament, it must be presented to the President. The President may (*a*) assent to the Bill, or (*b*) withhold his assent, or (*c*), in the case of Bills other than Money Bills, return the Bills for reconsideration of the Houses, with or without a message suggesting such amendment as he thinks necessary. When a Bill is so returned, each House shall reconsider it along with the suggested amendment, if any, and if the Bill is passed again by each House, with or without amendments, and is presented to the President for assent, the President shall not withhold his assent.

In all constitutions the Head of the State generally has the power to veto legislation and the President has also been given that power; but it must be understood that in the parliamentary system even this power must be used by him on the recommendation of the Cabinet. Otherwise an outright rejection by the President of a Bill passed by the elected Legislature would precipitate a crisis. Even in the presidential system of the U.S.A., the President has only a qualified veto, because it can be overridden by a two-thirds majority of the members present at a meeting in each House of Congress. In fact, the power to refuse assent seems to be entirely incongruous with full ministerial responsibility and is bound in practice to remain obsolete and unused. No time limit has been prescribed within

which the President is to declare his assent or refusal and it is possible that the President may keep a Bill pending before him for an indefinite time. As the date of the passing of an Act is the date on which it receives the President's assent, by advising the President to delay giving his assent, the Ministry may get an opportunity, in the case of exceptionally controversial measures, to reconsider the issues involved in them.

STAGES IN THE PASSING OF A BILL. Generally, a month's notice is required for leave to introduce a Bill. A Bill shall be accompanied by a financial memorandum which shall invite particular attention to clauses involving expenditure and shall also give an estimate of the recurring and non-recurring expenditure involved in case the Bill is passed into law. Every Bill is required to pass through the following stages:

(i) A member who wants to move a Bill must first seek leave of the chamber to introduce it. In doing so he may make a brief explanatory statement. An opposing member is also allowed to make a few remarks to explain his position. Then without further debate the question is put and if the majority of members are in favour of leave being granted, the mover forthwith introduces the Bill.

However, the Speaker may order the publication of a Bill in the *Gazette* although no motion has been made for leave to introduce it. In that case such a motion is not necessary and if the Bill is afterwards introduced it is not necessary to publish it again.

(ii) After a Bill has been introduced it is published in the Government *Gazette*.

(iii) When a Bill is introduced the member in charge may make one of the following motions: (*a*) that the Bill be taken into consideration at once; (*b*) that it be

referred to a Select Committee; or (*c*) that it be circulated for eliciting public opinion. Whenever any of these motions is made, the principles of the Bill and its general provisions may be discussed, but not details. This is called the First Reading of the Bill.

If (*c*) is accepted, the Bill may be referred to a Select Committee after public opinion has been elicited.

The Select Committee may hear the necessary evidence and usually has to submit its report, with dissenting minutes, if any, within two months. The report and the minutes are published in the *Gazette* and also circulated among members. The report is then presented to the Legislature by the member in charge of the Bill with a brief explanatory speech.

(iv) After the presentation of the Select Committee's report the member may move that the Bill as reported by the Select Committee be taken into consideration, or be recommitted to the Select Committee or circulated for eliciting public opinion. If it is agreed that it should be immediately taken into consideration the Speaker has to submit the Bill clause by clause separately to the vote. Any member can move an amendment to any clause with one clear day's notice. Votes are first taken on the amendments and then on the clauses as they originally stood or as they have been amended. This is called the Second Reading of the Bill and constitutes the most important stage in its enactment because it is at this stage that all its clauses and sections are scrutinized in every particular, including their wording and even punctuation.

(v) After the motion that the Bill be taken into consideration with or without amendments is carried, the member can move at once or at a later stage that the Bill be passed; only verbal amendments are allowed at this

stage and there can be only a general discussion in respect of the Bill, or for its rejection. This is called the Third Reading of the Bill.

Every Bill is thus required to be passed three times in three separate readings. After it is passed in this way by one chamber it must be sent to the other chamber and there again it has to pass through the same procedure of three readings. After the Bill has been passed by both the chambers it goes to the President for his assent. Only after that assent is given does the Bill finally become law.

REASON WHY THE LEGISLATIVE PROCESS IS LENGTHY. It will be seen that the passage of a Bill into law involves quite a lengthy process which normally takes a considerable time to complete, sometimes even as much as two or three years. Critics who are impatient of delay and who believe in quick action point to this dilatory procedure as one of the serious shortcomings of democracy. In their view the method of three readings in two Houses, with a Select Committee and circulation for public opinion coming in between, is the method of wasteful repetition and an extravagant indulgence in inconsequential rhetoric. They would abridge the routine to less cumbrous proportions.

Such criticism, however, misses the fundamental concept of the ideal of popular government. Democracy means rule by the people under the guidance of wise men, but it is not the rule only by wise men in their own unfettered discretion. It is of the essence of its working that all shades and sections of public opinion should have the fullest opportunity to express their opinions and to influence the final decisions which will, in the nature of things, be taken by the majority. The country which will

be called upon to obey a law must be adequately educated about all its implications before it is passed by its elected representatives. All this will necessarily take considerable time and it would not be correct to interpret it as an unwarranted delay. Arguments, discussions, attempts at persuasion, vigorous criticism, extensive publicity are all the very soul of the democratic technique and inseparable from it. They do involve wastage of time and energy which on occasions may become inordinate and very annoying, but on the whole the price is worth paying for ensuring a conscious and informed acceptance by the people of a law that is proposed in their interests.

In times of emergency when speedy action is absolutely essential, even a popular democracy, if it is prudent, can rise to the occasion. Taking into account the urgency of the problem and inspired by considerations of national safety and by a sense of discipline it can dispense with the lengthy discussions of normal times and pass all the three readings of a Bill in a few days, and even a few hours during one sitting, and enact it into law. There is nothing to prevent it from doing so. The English Parliament is known to have taken such a wise course more than once when the nation was threatened by calamities.

C. Procedure in Financial Matters

FINANCIAL PROPOSALS ON THE INITIATIVE OF THE EXECUTIVE. It is an essential principle of democracy that all taxation and all public expenditure must be voted by the people. The Executive, therefore, can raise money by levying taxes or borrowing or otherwise, and can spend money, only with the authority of the representatives of the people, that is the legislative chambers. The initiative in these matters must come from the Executive

because they are in direct charge of the administrative machine and are in a position to know exactly the nature of the requirements of the State and also of the limitations on its ability to satisfy them. All financial proposals must, therefore, proceed from the Government; the Legislature will have the power to sanction particular items or to reduce them or even to reject them, but they have no power to recommend an increase either in taxation or in expenditure. This is a very healthy restriction for the successful working of a democracy, because it imposes an effective check on the temptation to indulge in irresponsible though attractive suggestions on the part of members of the Legislature merely for the purpose of acquiring easy popularity with the electorate.

THE BUDGET. Estimates of the income and expenditure of the State are prepared by the Ministry, the Finance Minister being mainly entrusted with that task. After they have been prepared, the President shall cause the annual finance statement, that is the Budget, for the ensuing year to be laid before both the Houses of Parliament. The statement shall contain the estimated receipts as well as all expenditure of the Government of the Union. The estimates of expenditure shall distinguish expenditure on revenue account from other expenditure and shall show separately (*a*) the sums required to meet expenditure which is charged upon the Consolidated Fund, and (*b*) the sums required to meet other expenditure proposed to be made from the Consolidated Fund.

EXPENDITURE CHARGED ON THE CONSOLIDATED FUND. The following expenditure is charged on the Consolidated Fund of India: (*a*) the emoluments and allowances of the President and other expenditure relating to his office; (*b*) the salaries and allowances of the Chairman and

Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the House of the People; (*c*) debt charges, including sinking fund and redemption charges; (*d*) the salaries, allowances and pensions payable to Judges of the Supreme Court; pensions payable to Judges of the Federal Court (as it existed before the inauguration of the Constitution); pensions payable to Judges of a High Court; (*e*) the salaries, allowances and pensions payable to the Comptroller and Auditor-General of India; (*f*) any sums required to satisfy any judgement, decree or award of any court; (*g*) any other expenditure declared by the Constitution; for example, administrative expenses of the Supreme Court and of the Comptroller and Auditor-General, grants-in-aid to the States, expenses of the Union Public Service Commission. Parliament has also been given the power to add to the list by passing a law to that effect.

All this expenditure which is charged upon the Consolidated Fund of India will not be submitted to the vote of Parliament; but all the items of expenditure are open to discussion by either House of Parliament. The Legislature will thus get an opportunity every year to criticize the administration even in respect of matters which are generally supposed to be non-controversial and which are, therefore, not allowed to be voted upon by the Legislature. It may be interesting to note that under the Act of 1935 the salaries of Ministers, though fixed by an Act of the Legislature, were not allowed to be voted every year at the time of the Budget. This reactionary step was taken to prevent a repetition of what was considered by the British Government to be an abuse of their power by the Legislature when, after the Montford Reforms, they expressed their displeasure at the conduct of Ministers by

reducing their salary practically to nothing, thereby compelling them to work without any remuneration. However, in the working of real democracy such a degree of antagonism between the Legislature and the Ministers cannot be reached because as soon as Ministers get even a faint indication of the lack of confidence of the Legislature in their policies they will immediately tender their resignation. In the new Constitution the salaries of Ministers, as also the salaries of members of the All-India Services, are made subject to the annual vote of the Legislature. The working of a department can, therefore, be criticized, and grievances in regard to it can be ventilated by a discussion on a token or nominal cut in these salaries.

Expenditure voted by Parliament. All expenditure other than that which is charged on the Consolidated Fund shall be submitted to the House of the People in the form of demands for grants; and the House shall have power to assent or to refuse assent to any demand, or to assent to any demand subject to a reduction of the amount. It will have no power to suggest an increase in the expenditure. No demand for a grant shall be made except on the recommendation of the President, that is, in actual practice, of the Government in power. After all, the responsibility for conducting the affairs of the State lies on the shoulders of the Government in existence for the time being, and it is only that authority which must be considered competent to judge exactly what amount of money will be required to enable it to perform its duties and functions in an efficient manner. It would not only be odd but even demoralizing to permit members of the Legislature to sanction amounts of money for expenditure by Ministers when the latter had not demanded them. In the hands of political agitators who are not particularly

scrupulous such a privilege is likely to be abused. There might be a display of competitive generosity on the part of members just for the purpose of pleasing the electorate, but at the cost of the public exchequer and also of public morale. The results of this kind of flirting with popular sentiment would surely cause great damage to the very concept of democracy. The Legislature of the United States does, indeed, possess the power of increasing the expenditure, but it could hardly be said that the results of such a system are really very satisfactory or desirable.

STAGES IN THE PASSING OF THE BUDGET. The procedure in the Indian Parliament in regard to the passing of the Budget consists of the following stages:

(i) *The presentation of the Budget.* On a stated day the Budget for the ensuing year is laid before both Houses of Parliament, the Finance Minister personally presenting it to the House of the People. While presenting the Budget he makes an exhaustive explanatory speech clarifying all the important issues involved in the proposals. The Budget and copies of the Finance Minister's speech are circulated to all members who are then given some time to study them carefully. There is no discussion on the Budget on the day on which it is presented to the House. A Budget generally contains three different kinds of information: (*a*) actual receipts and expenditure of the previous year with a review of the financial position during that period; (*b*) an estimate of the receipts and expenditure for the coming year; (*c*) proposals of taxation and other methods for meeting the expenditure of the coming year. The financial year is the period from 1 April of a year to 31 March of the next calendar year.

(ii) *General discussion.* The second stage in regard

to the Budget is a general discussion on its proposals subsequent to its presentation. A certain number of days is allotted for this purpose. The discussion will extend to the Budget as a whole and to any question, principle or policy involved in it; but at this stage no motion shall be moved nor shall voting take place on any item. No item of expenditure is exempted from this general discussion and even items that are charged on the Consolidated Fund can come within the purview of the criticism of the legislators. In fact, this is an occasion on which members of the different parties and particularly those of the opposition parties give expression to their grievances against the administration as a whole and they may cite instances in support of their criticism of the way in which particular departments of government have been actually functioning.

(iii) *Demands for grants.* After the general discussion is over, the estimates are submitted to the House of the People in the form of demands for grants under particular heads. They are put forward by the Ministers of the respective departments who make explanatory speeches justifying the amounts mentioned in the demands. Speeches from members may follow and the House may ultimately assent to the demands or refuse them altogether or reduce the amount that is demanded, amendments being moved for the latter two purposes. The House has no power to increase the amount demanded. The Speaker, in consultation with the Leader of the House, allots a definite number of days for the discussion and voting of demands for grants. It is, of course, necessary that such a restriction should be imposed, otherwise discussions might become endless and the work of the Government unnecessarily hampered. The number of

days so allotted must not, however, be too small, because it would amount to a denial of an adequate opportunity to the members of the Legislature to ventilate the grievances and opinions of the public on particular issues. On the last of the days allotted for the voting of grants at a stated hour in the evening—5 o'clock has been prescribed in the Rules—the Speaker must stop all discussions and put all the remaining demands to the vote of the House which will be at liberty to accept them or to throw them out, but which will now have no opportunity to modify them in any way.

CUT MOTIONS. When a demand is made by a Minister, a cut may be proposed in it by any member. The motion for a cut, which comes in the form of an amendment, may be intended to bring about reduction in the expenditure, because in the opinion of the mover there is scope and justification for such a reduction. If the motion is passed, the department concerned will actually get only that amount to spend as has been sanctioned by the Legislature. Substantial cuts are not likely to be proposed by members belonging to the party in power, because the Ministers are their own leaders in whom they have implicit confidence and whose lead they are normally expected to follow on all occasions. If there are serious differences of opinion between the leaders and their followers they can be thrashed out at party meetings and Ministers may even agree to yield to the pressure that may be exerted on them by the rank and file; so that when the matter comes up before the Legislature the Minister himself may announce that he has accepted certain modifications. On the other hand, members of the Opposition may suggest substantial cuts for the purpose of effecting economy. But there is no chance of

their proposals being passed, because they are in a minority in the House.

TOKEN CUTS. Most of the cuts which are moved are not, however, intended to reduce the amount of expenditure. They are called token cuts and suggest a reduction of only Re 1, Rs 10 or Rs 100 in the amount that is demanded. The idea is to get an opportunity to discuss the operations of that particular department, to expose its inefficiency or weaknesses and to suggest concrete ways of improvement. Members of the party in power as also members of the Opposition may move such motions. Ministers intervene in the debates, give replies to criticisms and clarify issues. Quite often such motions are not pressed to a division because their purpose is served when adequate discussion has taken place. But, if such a motion made by a member of the Opposition is passed by the majority of the House, it may be taken to be a vote of no-confidence in the Ministry and the resignation of the Government may follow. This is, however, not likely to happen as long as the solidarity and discipline of the political party in power are intact.

LESSER POWER TO THE COUNCIL OF STATES. The powers of the Council of States in respect of financial matters are lesser than those conferred upon the House of the People. The Budget must be presented to it and it has a right to hold a general discussion on all its items including expenditure charged upon the Consolidated Fund. This occasion can be utilized by its members to express their opinion on the general working of the various departments of the State and thus present the point of view of a body, many of the members of which are supposed to be 'elder statesmen'. However, no motions can be made at this stage and there can be no taking of votes.

The Council does *not* possess the right of voting grants; that is the exclusive privilege of the House of the People. There is no question, therefore, of any demand for grants being submitted to the Council of States and any cut motions being suggested on them.

Appropriation Bills. After all the grants demanded by Ministers have been made by the House of the People, a Bill called the Appropriation Bill is introduced in the House. This Bill provides for the appropriation out of the Consolidated Fund of India of all monies required to meet (*a*) the grants voted by the House of the People, (*b*) the expenditure charged on the Consolidated Fund of India not exceeding the amount shown in the Budget. No amendment can be proposed to any such Bill in either House of Parliament which will have the effect of varying the amount or altering the destination of any grant made by the House, or of varying the amount of any expenditure charged on the Consolidated Fund. The Bill, like any other Bill, must be passed by both the Houses before it can be enacted into law.

No money shall be withdrawn from the Consolidated Fund of India except under appropriation made by the Appropriation Act. The mere voting of grants by the House does not by itself authorize expenditure of money out of the Consolidated Fund. It will be seen that the Appropriation Act contains authorization in respect of expenditure voted as well as expenditure charged upon the Fund.

Supplementary Budgets. It may happen that an amount authorized by the Appropriation Act for being spent on a particular service during the current financial year is found insufficient or some need may arise during the year for supplementary or additional expenditure

which was not contemplated when the Budget was prepared and presented; it may also happen that money has been spent on some service during the financial year in excess of the amount granted for that service for that year. In such cases supplementary budgets must be laid before both the Houses of Parliament showing the estimated amount of the additional expenditure, and demands for grants to cover that amount must be presented to the House of the People for its sanction. After the grants are voted by the House, an Appropriation Bill embodying them must be presented to both the Houses of Parliament and passed by them into an Act. Supplementary budgets are naturally not looked upon with much favour by members of the Legislature, because they practically amount to an *ex post facto* confirmation of the expenditure which has already been incurred by the Government in anticipation of the Legislature's sanction. It will be almost impossible to refuse such requests made by the Executive, and the Legislature may feel that such a method tends to diminish its control over national finance. Yet the power of spending money, in exceptional cases, in excess of the amount sanctioned cannot be denied to the Executive, because unforeseen circumstances may arise and the situation must be handled with efficiency and dispatch. In a responsible democracy the Executive may be trusted to exercise such power only when it is absolutely necessary to do so, bearing in mind constantly the spirit of the Constitution.

EMERGENCY EXPENDITURE. Sometimes, in a national emergency, the Government may feel that it is essential to spend some amount of money forthwith in the interest of the State. However, it may not be possible for it to work out detailed estimates, because the situation may

be full of unpredictable elements. Similarly, sometimes the services for which expenditure has to be incurred may be of such a magnitude and of such an indefinite character that details of the expenditure cannot be previously worked out and given in the Budget; demands for the necessary expenditure will, therefore, have to be made in rather an unexpected manner. Occasions may also arise when a particular or special purpose does not form part of the current services of the year and yet expenditure on it is considered desirable during the current year. Money will, therefore, have to be voted by the House separately for such a particular purpose. In order to cover all these exceptional circumstances the House of the People has been given the power to pass the necessary Appropriation Acts.

FINANCE BILL. It is the practice in India to submit to the Legislature every year what is known as the Finance Bill which incorporates all proposals of new taxes as well as of changes in the rates of taxes or duties which are already in operation according to permanent Acts passed for that purpose (for example, changes in the rates of income-tax which are already in operation under the Income Tax Act, or changes in the rates of customs duties, which are already in operation under the Indian Tariff Act, or changes in the rates of postage which are already in operation under the Indian Post Office Acts, and so on). This Bill, like other Bills, has to be passed by both the Houses before it can become an Act. It must be understood that an Appropriation Act embodies proposals for expenditure while the annual Finance Act embodies all proposals for taxation and revenue for the financial year.

No Money Bill and no amendment to such a Bill can

be introduced except on the recommendation of the President and such a Bill shall not be introduced in the Council of States.

D. Parliamentary Committees

The work of government in a modern democratic welfare state assumes huge proportions and it is also of a a very difficult and complex character. With the state purposely undertaking heavy responsibility in every field of corporate life—economic, social, educational and cultural — the elected legislature which is rightly described as the nation in miniature must prove itself to be fully equal to the task. Details of policy and their practicability have to be thought out in every sphere and then accepted. Their implementation has to be watched with the greatest vigilance and care. It must be remembered that a gigantic administrative machine must necessarily be a vital adjunct of an active and ambitious democracy, and the legislature will have to be constantly alert to ensure that the enormous executive powers that inevitably have to be vested in this machine are properly exercised, are not exceeded either in letter or in spirit, and are not abused.

Obviously, all the five hundred members of the legislature cannot perform these functions collectively as a body. The number is far too big to permit such a possibility. There has, therefore, developed in modern democracies the system of working through parliamentary committees, each consisting of members of parliament or the legislature, elected by that chamber or nominated by its Speaker and holding office generally for a year. The number of such committees will depend upon the amount of work which the state has undertaken and the degree of interest which the legislature displays in that work. Their members are

expected to contain representatives of all parties in the House; they have to hold meetings, call for evidence, examine witnesses, and after full deliberations to submit their reports or findings to the parent body, namely, Parliament. The latter can then consider these reports and take on them whatever action it deems necessary to take.

The system of parliamentary committees which has now come to be universally adopted makes it possible for the legislature to work on the principle of division of labour, a few members of the legislature who are particularly interested in a subject being called upon to devote their time, experience and talent for helping to determine policies and actions in respect of that subject. Another important advantage of the system of parliamentary committees is that the work of government gets distributed and diffused over large sectors of the House and contributes to creating that general sense of intimacy and realism about the affairs of the state which is so essential and healthy for the success of democracy. It must be made clear that these committees are not statutory bodies created by the Constitution. They are entirely the creations of Parliament and are brought into existence under the rule-making power that has been conferred on that body.

Several committees are provided for in the Rules of Procedure of the House of the People. Two of them may be described in some detail:

COMMITTEE ON PUBLIC ACCOUNTS. At the commencement of the first session of Parliament every year a committee is constituted consisting of not more than fifteen members of the House of the People elected from itself by proportional representation. The Committee has to satisfy itself that monies shown in the accounts as disbursed were legally available for or applicable to the

service or purpose concerned, that the expenditure conforms to the authority which governs it and to examine such trading, manufacturing and profit and loss accounts and balance sheets as the President may have required to be prepared; the Committee will also examine the Auditor-General's Report. Scrutiny by such a parliamentary committee is a great check on the Executive. Its report exposes any irregularities in national expenditure though they cannot be corrected retrospectively; the Committee's investigations are in the nature of a post-mortem and serve as a warning and a corrective for the future.

COMMITTEE ON ESTIMATES. This committee is to consist of not more than twenty-five members elected by the House every year from amongst its members according to the system of proportional representation. The term of office of a member is one year. It is the duty of the committee to report about economies, improvement in organization, efficiency or administrative reform that may be effected in the estimates, to suggest alternative policies to bring about economy and efficiency in administration, to examine whether the money is well laid out within the limits of the policy implied in the estimates and to suggest the form in which estimates shall be presented to Parliament.

It will be seen that the Committee on Public Accounts has to examine accounts quite some time after expenditure has actually been incurred; its exposures and criticisms will be a salutary check on the administration, particularly for future action. On the other hand, the Committee on Estimates is concerned with the working of different Ministries during the course of the budget year; in the light of the estimates sanctioned for a particular Ministry in the current Budget, it may examine the expenditure of

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the Ministry more or less as it is in the process of being incurred and make its own recommendations for ensuring better economy and efficiency.

Besides these two committees, there are the Business Advisory Committee, Committee on Private Members' Bills and Resolutions, Committee on Petitions, Committee of Privileges, Committee on Subordinate Legislation, Committee on Government Assurances, Committee on Absence of Members, Rules Committee and Parliamentary Committees. The names of these committees are fairly indicative of the purposes for which they are formed.

16

THE UNION JUDICIARY: THE SUPREME COURT

IMPORTANCE OF THE COURT. A Supreme Court of Justice is, in the nature of things, an essential and integral part of a federal constitution. In that system of government, the Constitution prescribes the distribution of powers between the Central Government and the units which compose the federation; and each one of these two authorities, subject to the other provisions of the Constitution, is vested with exclusive jurisdiction within its own particular sphere. No such fundamental demarcation of spheres exists in a unitary State because all authority is supposed to be concentrated in one single national government. A federation, on the other hand, is a kind of arrangement, consciously and purposely evolved, the peculiarity of which is that different political units are combined to form a larger and indestructible whole for purposes of the common good but in which the units are allowed to retain their identity and enjoy considerable freedom of governmental action in a sphere that is defined for them. It may be that in spite of the meticulous care with which the distribution of powers may have been defined, some ambiguity, some overlapping, may have still remained, and disputes may arise between the Centre and the units in regard to interpretation about their respective jurisdictions. A superior authority must be provided to resolve such disputes and conflicts by an authoritative pronouncement of the precise meaning of the Constitution

in respect of the controversial issues. That important duty is primarily assigned to the Supreme Court. It is the highest judicial tribunal created by the Constitution, and its verdicts are binding upon all Governments within the Federation, that is, both the Central Government and the State Governments.

In spite of the fact that in the Indian Federation the Central or Union Government is invested with very large powers, and therefore the nature of the duties of the Supreme Court may not be exactly the same as that of the Supreme Court of the United States, the importance of the role that will be played by the Court in the constitutional working of the country cannot be minimized. In many respects and on several occasions the interpretation of the Court will have to be sought and given, particularly during the early formative stages of the operation of the Constitution.

INTEGRATED JUDICIARY IN THE INDIAN FEDERATION. Attention may again be drawn to the remarkable feature of the Indian Constitution that although it is federal in character the judiciary that it has set up is a single integrated judiciary for the whole Union. This is different from the U.S.A. where the Federal and State judiciary are separate and independent of each other, there being separate federal courts to administer and enforce federal laws throughout the country. In India, the Supreme Court and the High Courts are units in the same structure and provide remedies in all cases arising under any law. There are no separate Union courts, at least at present, to administer Union laws in the States, but the Constitution has expressly empowered Parliament to establish additional courts for the administration of laws relating to matters mentioned in the Union List. If such a step is

taken by Parliament, a dual organization of courts may come into existence; but it will only be a question of organizational convenience and will not amount to a departure from the basic principle of an integrated judiciary, competent to try cases under all laws, whether civil, criminal or constitutional.

NUMBER AND APPOINTMENT. The Constitution lays down that there shall be a Supreme Court of India consisting of a Chief Justice of India and not more than seven other judges; Parliament, however, may by law prescribe a larger number. No minimum number is prescribed and the Court at present consists of six judges including the Chief Justice. Every judge of the Supreme Court shall be appointed by the President after consultation with such of the judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose; in the case of appointment of a judge other than the Chief Justice, the Chief Justice of India shall always be consulted. It will thus be seen that the appointments are not made purely by the Executive and the danger of persons being selected to hold such important offices on a political basis is minimized to a very great extent. On the other hand, the appointments are not left to be made only by the Chief Justice even though he is the highest judicial authority; that would have invested the judiciary with a degree of independence which cannot properly fit in with any form of government.

TENURE. A judge of the Supreme Court will hold office until he attains the age of sixty-five years, which is higher than the usual age of superannuation. He may, however, resign his office earlier, and may also be removed from his office on the ground of proved misbehaviour or incapacity. The order for removal shall be passed by the

President; but before he can do so an address by each House of Parliament supported by a majority of the total membership of each House, and by a majority of not less than two-thirds of the members present and voting, has to be presented to the President for such removal on the ground of proved misbehaviour or incapacity. The procedure for the presentation of such an address and for the investigation and proof of the misbehaviour or incapacity of a judge may be regulated by Parliament by law. Perfect security of tenure is thus guaranteed to the judges. This is essential to enable them to perform their duties with absolute impartiality and independence, regardless of the social or official status of the parties involved in a dispute.

QUALIFICATIONS. A person shall not be qualified for appointment as a judge of the Supreme Court unless he is a citizen of India and (*a*) has been for at least five years a judge of a High Court, or (*b*) has been for at least ten years an advocate of a High Court, or (*c*) is in the opinion of the President a distinguished jurist. Non-practising lawyers who are, however, great experts in constitutional law can thus find a place on the Bench of the Supreme Court. Professors of law in universities may not be practising lawyers, yet their study and knowledge of law may be so deep that they can become successful judges. That has actually been the experience of the U.S.A. No person who has held office as a judge of the Supreme Court can plead or act in any court or before any authority within the territory of India.

OATH, SALARY AND OTHER PRIVILEGES. Every person appointed to be a judge of the Supreme Court shall take an oath or make an affirmation before he enters upon his office that he will bear true faith and allegiance to the

Constitution of India and that he will duly and faithfully and to the best of his ability, knowledge and judgement perform the duties of his office without fear or favour, affection or ill-will. The Constitution has laid down in the Second Schedule the salaries which should be paid to the judges of the Supreme Court. The Chief Justice will get Rs 5,000 per month, and any other judge Rs 4,000 per month. Every judge of the Court shall also be entitled without payment of rent to the use of an official residence. He shall receive such reasonable travelling allowances and other facilities while travelling as the President may from time to time prescribe. He will have the same rights in respect of leave and pension which were formerly enjoyed by the judges of the Federal Court. It is thus clear that Parliament will have no right to interfere with the salaries of the Supreme Court judges because they are fixed by the Constitution itself; any variation in them can be effected only by an amendment to the Constitution. If, however, the President at any time issues a Proclamation of 'financial emergency' he has got the power to reduce the salaries of judges. Parliament has been expressly given the power to pass legislation regulating the privileges, allowances and rights of judges, and modifications can be introduced in them by the ordinary legislative process. However, they cannot be varied to the disadvantage of a judge once he is appointed.

Ad hoc JUDGES. When the office of Chief Justice of India is vacant or when he is unable for any reason to perform the duties of his office, those duties shall be performed by such one of the other judges of the Court as the President may appoint for the purpose. If at any time there is no quorum available to hold or continue a session of the Court the Chief Justice of India may request a judge of any

High Court to attend the sittings of the Supreme Court as an *ad hoc* judge for such period as may be necessary; he must, however, take the previous consent of the President for doing so, and must also consult the Chief Justice of the High Court concerned. It shall be the duty of the judge so appointed to attend to the work assigned to him in the Supreme Court in priority to his other duties. The Chief Justice of India may also at any time, that is whether a quorum of judges is available or not, request any person who has held the office of a judge of the Supreme Court but who has retired, to sit and act as a judge of the Court again; but the previous consent of the President must be taken before such an appointment can be made, and the consent of the person concerned would also be necessary. These provisions are intended to impart some elasticity to the numerical strength of the Supreme Court, making it easily possible to increase the number whenever pressure of work demands it.

The Supreme Court shall be a Court of record and shall have all the powers of such a Court including the power to punish for contempt of itself. A Court of record is a Court 'whose acts and proceedings are enrolled for a perpetual memory and testimony. These records are of such high authority that their truth cannot be questioned in any Court'. The Supreme Court shall sit in Delhi or in such other place or places as the Chief Justice of India may, with the approval of the President, from time to time, appoint.

ORIGINAL JURISDICTION. The Supreme Court has exclusive original jurisdiction in the following cases (*a*) between the Government of India and one or more States; (*b*) between the Government of India and any State or States on one side and one or more other States on the other

side; or (*c*) between two or more States, if and in so far as the dispute involves any question on which the existence or extent of a legal right depends; the jurisdiction of the Court will not, however, extend to disputes arising out of any treaty, agreement, engagement, or sanad which was entered into or executed before the commencement of the Constitution with any of the States mentioned in Part B of the First Schedule. The Supreme Court has no original jurisdiction over cases and suits to which citizens are a party, nor in suits between residents of different States or between a State and a resident of another State, or between a private individual and the Government of India. It is a tribunal for settling disputes between the constituent units of the Federation. The term 'legal right' means a right which has been given recognition by law and which is capable of being enforced by the authority of the State, or in other words a justiciable right. This is the original jurisdiction of the Supreme Court.

APPELLATE JURISDICTION. The Supreme Court is also invested with appellate jurisdiction of different types. It can hear appeals on constitutional questions; appeals in which no constitutional questions are involved, whether in any civil or any criminal cases; appeals by special leave of the Supreme Court in any other case; and transitional jurisdiction.

An appeal shall lie to the Supreme Court from any judgement, decree or final order of a High Court in the territory of India, whether in a civil or criminal or other proceeding, if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution. Where a High Court has refused to give such a certificate the Supreme Court may grant special leave to appeal from such judgement, if it

is satisfied that the case involves a substantial question of law as to the interpretation of the Constitution. An appeal shall also lie to the Supreme Court from any judgement, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies (*a*) that the amount or the value of the subject-matter of the dispute is not less than Rs 20,000, or such other sum as may be specified in that behalf by Parliament by law, or (*b*) that the judgement, decree or final order involves directly, or indirectly, some claim or question respecting property of the like amount or value, or (*c*) that the case is a fit one for appeal to the Supreme Court or that the appeal involves some substantial question of law. No appeal shall lie to the Supreme Court from the judgement of one judge of a High Court, unless Parliament provides otherwise by law.

An appeal shall lie to the Supreme Court from any judgement, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court (*a*) has, on appeal, reversed an order of acquittal of an accused person and sentenced him to death, or (*b*) had withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted an accused person and sentenced him to death, or (*c*) certifies that the case is a fit one for appeal to the Supreme Court. Parliament may by law confer on the Supreme Court any further powers to hear appeals from any judgement in a criminal proceeding of a High Court subject to such conditions and limitations as may be specified by such law.

The Supreme Court shall also have jurisdiction and powers with respect to any matter to which the provisions stated above do not apply if jurisdiction and powers in

relation to that matter were exercisable by the Federal Court before the commencement of the Constitution; this power will lie in the Supreme Court until Parliament has by law decided otherwise.

SPECIAL LEAVE TO APPEAL. The Supreme Court may, in its discretion, grant special leave to appeal from any judgement, decree, sentence or order in any case or matter passed or made by any court or tribunal in the territory of India; but this shall not apply to any judgement or sentence or order passed by any court constituted under any law relating to the Armed Forces. This power is intended to cover all such cases which may not have been specifically put down as coming within the purview of the Supreme Court but in which the interference of that Court may be necessary in the interests of justice. The power would be exercised to give relief to an aggrieved party if it were felt that the principles of natural justice had not been observed. The Supreme Court has also been given the power to review its own judgement or order for reasons which may have been put down in the Rules and which in its opinion justified such a review.

ADDITIONAL JURISDICTION. In addition to the jurisdiction conferred upon the Supreme Court by the Constitution itself, Parliament may by law confer further jurisdiction and powers upon it with respect to any of the matters in the Union List. Parliament may also by law confer on the Court power to issue directions, orders or writs, including habeas corpus, mandamus, certiorari and quo warranto, for any purpose other than those that have been previously mentioned, i.e. for the enforcement of fundamental rights, the power in regard to which is conferred by the Constitution itself. Parliament may by law make provision for conferring upon the Supreme Court such supplementary

powers as may appear to be necessary or desirable for the purpose of enabling the Court more effectively to exercise the jurisdiction conferred upon it by the Constitution.

The law declared by the Supreme Court shall be binding on all courts within the territory of India. As the highest court of the land its pronouncements must be taken as the most authoritative guidance and interpretation in all disputed matters and will secure uniformity of judicial exposition and practice throughout the country. The Supreme Court may pass decrees or orders for the vindication of justice in any case or matter pending before it and any decree or order shall be enforceable throughout the territory of India. The Court shall also have power to make any order for the purpose of securing the attendance of any person or production of any documents concerning any contempt of itself. The judgements of the Court will not, therefore, be merely in a declaratory form. They can be executed by the Court's authority in accordance with any law that may be passed by Parliament for that purpose.

CONSULTATIVE JURISDICTION. If at any time it appears to the President that a question of law or fact has arisen which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the Court may after such hearing as it thinks fit report to the President its opinion.

This is a kind of advisory or consultative function which the Court may be called upon to perform and may be found to be very useful by the Government when they are not sure about the validity of any legislative measure which they are contemplating in the interest of the public. A favourable opinion given by the judges will fortify their

position; an unfavourable opinion on the other hand will avoid unnecessary litigation in future.

It thus seems to be a useful device, but several eminent jurists have criticized this method of eliciting advisory opinion on the ground that it will have little value, because, being based on hypothetical and not concrete questions, it would be entirely speculative in character and would also prejudice the interests of future litigants. It may be noted that when a question is so referred to the Supreme Court for its opinion the Court is not bound to give it, though normally speaking it will not decline to do so. It is also true that the opinion it gives will not be binding upon the authority which has sought it. In fact the expression of such an opinion does not amount to a judicial pronouncement which is binding upon any party; the Supreme Court itself will not be prevented from giving a contrary judgement if it feels inclined to do so in case the matter comes up before it again as a result of a legal dispute.

All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court. There is, therefore, no question of attempts being made to defy the Court's powers or indirectly to sabotage any of its orders.

POWER TO MAKE RULES AND REGULATIONS. Subject to the provisions of any law made by Parliament, the Supreme Court may make rules for regulating generally the practices and procedure of the Court in respect of such matters as persons practising before the Court, hearing appeals, reviewing its own orders or judgements, costs and fees of proceedings, granting of bail, stay of proceedings, etc. The rules may also fix the minimum number of judges who are to sit for any purpose, and may provide for the powers of single judges and Division Courts. The minimum number of

judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of the Constitution or for the purpose of hearing any reference made by the President shall be five. No judgement shall be delivered by the Supreme Court except in an open Court; no judgement and no opinion shall be delivered by it except with the concurrence of a majority of the judges present at the hearing of the case, although a judge who does not concur shall not be prevented from delivering a dissenting judgement or opinion.

APPOINTMENT OF COURT OFFICERS. Appointments of officers and servants of the Supreme Court shall be made by the Chief Justice of India or such other judge or officer of the Court as he may direct; the President may, however, by rule require that no person not already attached to the Court shall be appointed to any office except after consultation with the Union Public Service Commission. The conditions of service of officers and servants of the Supreme Court shall be such as may be prescribed by rules made by the Chief Justice of India, but in so far as the rules relate to salaries, allowances, leave or pensions they will require the approval of the President. The administrative expenses of the Supreme Court including all salaries, allowances and pensions shall be charged upon the Consolidated Fund of India, and are not therefore left to be annually voted by the Legislature. All this is in keeping with the basic principle of the Constitution that the judiciary will have all the independence that is necessary for the dispensation of justice without fear or favour, and yet it will not be endowed with such a degree of independence and such powers as will make the judiciary a kind of State within the State.

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THE ATTORNEY-GENERAL AND THE COMPTROLLER AND AUDITOR-GENERAL OF INDIA

It is proposed to describe in this chapter the functions and duties of two important officers of the Union Government whose appointment is considered to be so essential that it is prescribed by the Constitution itself, and is thus made obligatory on the Government. One of them is charged with the performance of legal and legislative duties, while the other is charged with the responsibility of supervising and auditing national expenditure, and keeping national accounts in a systematic manner. The former is called the Attorney-General of India and the latter is called the Comptroller and Auditor-General of India.

The Attorney-General of India

Need for a Law Officer. Every Government requires the services of law officers possessed of the highest legal qualifications and of ample experience of legal work. For the implementation of ministerial policies which embody social ideals and which have been endorsed by the nation, a large number of laws have to be enacted in a modern democratic State. The intent and purpose of these laws are determined by the Ministry representing the people, but they have to be adequately expressed in correct technical language which must avoid ambiguities, inaccuracies and extraneous implications. The work of satisfactorily drafting a Bill is very difficult; it requires the knowledge

and experience of an expert at the highest level. Similarly, a government is often involved in legal proceedings either as plaintiff or prosecutor or defendant, and its side has to be effectively represented in a court of law whenever it is a party in a dispute. It must have, therefore, constantly ready at hand a counsel of great eminence to advise on all legal matters, to plead and to conduct cases on behalf of the Government in courts of law, and to prepare drafts of Bills proposed to be submitted by it to the Legislature.

A Political Office. The Attorney-General's office is generally considered to be a political office, similar to the office of Minister, though he need not necessarily be a very active politician. Primarily he must be a reputed expert in law whose competence is acknowledged on all hands, because his duties and responsibilities appertain to the interests of the nation as a whole. But it is also felt that unless he shares fully the general views and outlook of the party in power in all important matters, and honestly believes in its ideals, it may not be easy for him to give adequate expression in words to all that the party aspires to and all that it has promised to the electorate. After all, law is an instrument for carrying out the public will and proposals made by responsible Ministries are intended to implement policies which have the sanction of that will. The cold, erudite and mechanical approach of a mere expert, however correct and valuable in itself, will not be enough for such implementation; there must also be the warmth of sympathy and a sense of intellectual conviction to motivate the expert. In England, the Attorney-General is a prominent party leader who comes into office with his party and goes out with it. A similar practice is followed in other parliamentary Governments and is also

expected to be followed in India, though no occasion has as yet arisen to set up a precedent in this matter.

APPOINTMENT, QUALIFICATIONS AND DUTIES. The Attorney-General is, according to the strict letter of the Constitution, to be appointed by the President, but like Ministers of the Cabinet he will in actual practice be appointed by the Prime Minister probably in consultation with the Law Minister, though he will have no place in the Cabinet. He must be a person who is qualified to be appointed as a judge of the Supreme Court. It shall be the duty of this officer to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character as may from time to time be referred or assigned to him by the President. He has also to discharge the functions conferred on him by the Constitution or by any other law which is in force for the time being. The Attorney-General shall have the right of audience in all courts in the territory of India. He holds office during the pleasure of the President and shall receive such remuneration as the President may determine. The President has already made rules for the purpose, and they prescribe that the Attorney-General shall be paid a retainer of Rs 4,000 per month, that he shall normally reside in New Delhi and that it shall be his duty to advise the Government on such legal matters as are referred to him, to appear on behalf of the Government in all cases in the Supreme Court in which the Government of India is concerned, and to discharge the functions conferred on him by the Constitution.

The Comptroller and Auditor-General of India

IMPORTANCE OF AUDITING EXPENDITURE. In a democratic system, control over the purse must vest in the

Legislature and it is that body alone which can vote grants of expenditure for the Government. But it is not enough to possess only this power; the Legislature must further have the means to satisfy itself that the grants voted by it have actually been spent for the purposes for which they were voted, in the amounts in which they were voted, and by the persons who were authorized to spend them. It is therefore of the utmost importance to set up machinery to check and audit the accounts of the Government and to report how far the Legislature's desires have been scrupulously carried out and to what extent there have been irregularities and lapses. The machinery must obviously be composed of officers who are possessed not merely of the requisite professional and expert competence to fulfil the obligations of this office, but also of that independence and freedom from interference which will enable them to execute their job fearlessly and with complete impartiality. The Constitution has, therefore, made provision for the appointment of a Comptroller and Auditor-General of India. It lays down that there shall be such an officer and therefore no option is left to the Government as to whether he should be appointed or not.

APPOINTMENT AND OATH. The Comptroller and Auditor-General is appointed by the President and can be removed from office in the manner in which and on the grounds on which a judge of the Supreme Court can be removed and not otherwise. The officer, before he enters upon his office, must take an oath or make an affirmation before the President or any other person appointed by him in that behalf that he will bear true faith and allegiance to the Constitution of India and that he will duly, faithfully and to the best of his ability, knowledge and judgement perform the duties of his office without fear or

favour, affection or ill-will and that he will uphold the Constitution and the laws.

SALARY. The salary and other conditions of service of the Comptroller and Auditor-General shall be determined by Parliament and until they are so determined he will get a salary at the rate of Rs 4,000 per month as provided for in the Second Schedule of the Constitution. Neither his salary nor his rights in respect of leave, pension or age of retirement shall be varied to his disadvantage after his appointment. He will not be eligible to hold any further office either under the Government of India or under the Government of any State after he has retired from the post of the Comptroller and Auditor-General. The administrative expenses of the office including all salaries, allowances and pensions shall be charged upon the Consolidated Fund of India. It will thus be seen that the Comptroller and Auditor-General and his department are made independent of any control by the Executive. He has been described as the guardian of the national purse and the most potent instrument created by the Constitution for safeguarding the implementation of the Legislature's wishes in respect of national expenditure.

DUTIES. In his capacity as Comptroller, following the British model, this high official may be expected to have the duty to see that no money is taken out of the Consolidated Fund, whether of the Union or of a State, without statutory authority, and in his capacity as Auditor of the Public Accounts to see that the money issued out of the Consolidated Fund is spent in accordance with the grants sanctioned by the respective legislatures. His duties and the powers to be exercised by him in regard to the accounts of the Indian Union and of the States and of any other authority or body are to be prescribed by Parliament, and

until Parliament has prescribed them they will be such as were exercised by the Auditor-General of India immediately before the commencement of the Constitution. This department has to audit the expenditure of the Government and to satisfy itself that the monies shown as spent are actually spent; it compiles the accounts of such audited expenditure, enforces the financial rules and orders in respect of Government expenditure and sees to it that the expenditure has been sanctioned by the proper authority. A report on all these matters has to be submitted by the Comptroller and Auditor-General to the President regarding the accounts of the Union and to the Governor of a State regarding the accounts of the State. Both these accounts must be kept in such form as will be prescribed by him with the approval of the President. The President and the Governor shall cause these reports to be laid before each House of Parliament or before the Legislature of the State who will then have the opportunity of discussing them. In fact after such reports are presented they are referred to the Committee on Public Accounts of each House and are scrutinized by the Committee in detail. The Committee has to satisfy itself, among other things, that the monies shown in the accounts as having been disbursed were legally available for and applicable to the services to which they have been applied and that the expenditure has conformed to the authority which governed it. A report of the Committee's findings has to be submitted to the Legislature which may then take any action on it as it deems necessary. Such reports are generally very revealing and enlightening documents, pointing out grave errors and cases of dereliction of duty on the part of the Administration, and evoke a vigorous discussion.

CENTRALIZED AUDITING FOR THE WHOLE COUNTRY. It

will be noticed that the Comptroller and Auditor-General of India is an officer charged with the duty of audit and accounts of the whole country, that is, both of the Union Government and the State Governments. The Constitution has not provided for the creation of the office of an Auditor-General for a State though under the Government of India Act of 1935 a provincial Legislature was empowered to appoint such an officer. In the new Constitution the system of auditing of accounts is entirely centralized and advantages are thereby expected to accrue in the shape of uniformity of practice throughout the country, as also of economy.

18

GENESIS OF THE DISTINCTION BETWEEN PART A, PART B AND PART C STATES[1]

Provinces in British India. In the pre-Independence era the territory of India was divided into two parts, one consisting of the British Indian provinces directly administered by British rulers and the other consisting of Indian States which were administered, subject to British paramountcy and overlordship, by Indian Princes. The Indian Princes were the descendants of old Indian kings and other independent magnates who had submitted to the British conqueror either with or without a struggle and who, in return for their promise of loyalty to the new masters, were allowed to continue their regal existence on a diminutive scale and in ultimate subordination to the sovereign power.

There was an inherent disparity in the political status of British India and that of the Indian States. The former came under the direct authority of the British Parliament who could, and did, pass laws for its efficient and progressive governance. By the time of the outbreak of the Second World War in 1939 Parliament had evolved in British India a political system in which the people had a considerable voice in the Government and in which responsible Ministries were functioning

[1] The States Reorganization Commission has recommended the abolition of this distinction; see the Appendix to this book.

in autonomous provinces. British ideas of democracy, freedom, justice, liberal education and a high standard of administration had naturally a considerable influence in the evolution of the system; it gave a modern outlook to the Indian mind and, in spite of its occasional lapses into a policy of severe repression, political leaders in India did not find it impossible under its regime to fight non-violent battles for the country's liberation from foreign bondage.

THE INDIAN STATES. The Indian States, on the other hand, were governed by rulers who were guaranteed internal freedom in terms of treaties and engagements that were made with their ancestors by the British power during the process of the British conquest of India. It was urged on their behalf that as long as they remained loyal to the overlord and thus fulfilled their part of the obligation imposed by the treaties, the Paramount Power must respect the assurances given to them that there was to be no interference on its part with their internal sovereignty. The Princes were accustomed to the principles and traditions of personal government; their authority was not hampered or limited by any constitutional restraints; their subjects had no control over administration or finance. It is true that some kind of representative Legislatures were established by a few enlightened Princes in their States. The political advance of British India inevitably found some faint echo in what was described as Indian India. On the eve of Independence there was functioning in a few States something like dyarchy, with responsible Ministries in charge of a small number of subjects. But these were the rare exceptions. The general atmosphere in the majority of the Indian States was feudal and medieval, and the system of government in them was one of autocracy. It naturally gave rise to an agitation on the part of the

subjects for the assertion of their rights. They claimed for themselves at least those privileges which the British Parliament had conceded to the people in British India.

INDIAN GOVERNMENT'S ATTITUDE TO STATE PEOPLE'S AGITATION. However, the attitude of the Paramount Power in regard to such an agitation left much to be desired. Vested interests are always a buttress to established authority and particularly so when that authority consists of foreign conquerors. A wholehearted support to the just and legitimate demands of the people of the States could be made to appear as if it was taking sides between what was after all a domestic quarrel between the Princes and their subjects, and therefore an unwarranted interference in the internal affairs of the States. Nor did it fit in with the essential requirements and the technique of imperialism to appreciably weaken the authority of the Princes who found it to be a matter of great self-interest to be among the strongest pillars of the imperial edifice. The assurance of treaty rights and internal sovereignty could if necessary be stretched to cover any action that might be directly or indirectly taken by the Paramount Power to suppress agitation on the part of the subjects of the State for the attainment of their political and civic freedom. This led to a very anomalous position. While pledged on the one hand to banish bureaucratic rule from British India, and while actually introducing provincial autonomy in partial implementation of that pledge, the British Government appeared at the same time to stand as a mighty bulwark protecting the undemocratic and reactionary forces in the Indian States against legitimate claims of democratic progress. Even the All-India Federation contemplated by the Act of 1935 had envisaged an upper chamber of the Legislature in which a specially

privileged position was given to the Princes and the essentially retrograde character of which was immensely aggravated on account of that privileged position.

ALL STATES HAD NOT THE SAME STATUS. It is further necessary to remember that the States as a whole did not form, constitutionally speaking, a homogeneous group, each having the same status and powers as the others in respect of its particular territory. There were enormous variations in their size, population and the extent of powers enjoyed by them. Bigger States like Hyderabad, Kashmir, Mysore, Baroda, Travancore and Gwalior had extensive territory, substantial incomes and almost all the authority and apparatus of modern government for purely internal affairs. At the other end there were Estates or Jagirs which were merely small strips of land covering a few square miles and yielding a negligible income. They had some pretensions to a regal shadow but did not enjoy much governmental power. The age-long and profound unity of India, both geographical and cultural, thus had superimposed on it this layer of a purely accidental and most artificial political differentiation which created the illusion of separate entities in the place of what really was a fundamental oneness. The Indian people were unquestionably the same in every respect whether they lived in the British Indian provinces or in the Indian States.

LAPSE OF PARAMOUNTCY. When the British rulers decided to withdraw from India they declared that their paramountcy over the Indian States was terminated; it was not transferred to the successor Government of India after their departure. All the 600 Indian States which comprised about one-third of the total area of India thus automatically found themselves with the status of sovereign independence. To them it was a most fortuitous and

effortless acquisition. The whole position appeared to be absurd and ridiculous, but it was also dangerous because if the only natural and powerful nexus in the shape of a common Indian polity was not supplied in time firmly to hold together this amorphous mass of petty sovereignties, the country would have been the victim of a political fragmentation almost unprecedented in its long history. Such a calamity was fortunately averted by a combination of successful diplomacy, selfless patriotism and practical wisdom on the part of both the Indian leaders and the Princes. Independent India soon became a politically united India; the Princely dynasties were not liquidated but accommodated in the constitutional structure.

INTEGRATION OF THE STATES AFTER INDEPENDENCE. The twofold process of the accession of the States to the Indian Union and of their integration into sizable and viable units was swift and spectacular. In fact, once the impulse for unification was started it gathered an irresistible momentum. It even went to the length of the total abolition, by the method of merger, of some of the States whose territory was intricately mixed up and interspersed with the territory of the British Indian provinces. As many as 216 such States, among them being such large units as Baroda and Kolhapur, were merged in the adjoining provinces. In the case of other States, whose territory was contiguous but which by themselves were too small to constitute viable units, there was started the process of consolidation by the formation of bigger Unions. Five such Unions were formed between 1948 and 1949 and as many as 275 States were integrated into them. Hyderabad, Kashmir and Mysore were large enough to be viable units individually and there was no question of their being required to join any Union. These three States

and the five Unions mentioned above have been placed in a separate category by the Constitution and are described as Part B States.

PART C STATES. Some of the States presented peculiar problems. For instance Kutch, Himachal Pradesh and Manipur are situated respectively on the western, northern and eastern frontiers of India and therefore have great strategic importance; Delhi as the capital of the Union is in a unique position; Ajmer which stood as a sort of isolated British island in the midst of several Rajput States has not yet found it easy to coalesce with any one of them; Bhopal which had a Muslim ruler was given special terms of accession; Vindhya Pradesh was found by experience to be not adequately equipped or ready to evolve a proper administrative system. For these strategic, administrative and other special reasons sixty-one of this kind of Indian States were integrated into ten units and brought directly under the administration of the Government of India, though their territory was not merged in any of the surrounding areas. These are described as Part C States in the Constitution.

The Indian Union is thus composed of three different categories of States as enumerated in the First Schedule of the Constitution. Part A States represent the old British Indian Provinces and are nine in number; Part B States consist of three big and viable States and five viable Unions formed of some of the other States, and are eight in number; Part C States are also formed of some of the old Indian States; they are Centrally administered areas and are ten in number. This division only represents an unavoidable but a temporary projection of the past into the present and is a reminder of a great change-over from the old order to the new. In the ultimate

scheme of things, the constitutional difference in these three types of States cannot be either wide or fundamental, nor can it last for a considerable period. The polity of India as a whole is conceived and framed on some basic principles which must in the long run apply uniformly throughout the country. The difference between Part A and Part B States is merely the result of expediency and has been narrowed down to only a few items. The system of government that is prescribed for Part B States in Part VII of the Constitution is almost the same as the system prescribed in Part V for Part A States. There are only a few unimportant variations consequential on the fact that the accession of the States was an act of voluntary agreement on the part of the Princes and was based on the assumption of their continued existence as constitutional rulers in the new political picture of a federally united India. The office of Rajpramukh and Uparajpramukh were therefore specially created. They smoothed the transition from personal to popular rule and symbolized the transformation of absolutism into democracy.

SPECIAL FEATURES OF PART B STATES. The following are the points of difference, in regard to a few provisions, between the Part A and the Part B States. Whereas the head of a Part A State is called the Governor, the head of a State in Part B is designated the Rajpramukh. The former is *appointed* by the President while the latter is a person *recognized* as such by the President. In actual practice the person to hold this dignified post was selected as a result of the agreement that was arrived at between the Princes and the Government of India at the time of the accession of the States to the Indian Union. The power to recognize implies also the power to refuse or to withdraw recognition. The President may therefore be

considered to have the power of removing a Rajpramukh for misdemeanour or any other valid reason as he has in the case of the Governor. All the functions that are to be performed by the Governor in Part A States have to be performed by the Rajpramukh in Part B States. The salary and allowances of the Governor are determined by Parliament, but those of the Rajpramukh are determined by the President according to the terms of the Covenants entered into at the time of the formation of the respective Unions. Special agreements were made with Hyderabad and Mysore in this connexion. There is no fixed term of office in the case of a Rajpramukh; though it is not expressly stated in the Constitution, the office will be hereditary and normally speaking the lawful heir of the existing holder of the office may be expected to be recognized as his successor by the President. All States in Part B with the exception of Mysore will have only one legislative chamber, namely, the Legislative Assembly; Mysore will have, in addition to the Assembly, an upper chamber, the Legislative Council. The salaries and allowances of the officers of the Legislature and of their members shall be determined by the Rajpramukh.

CONTROL BY THE PRESIDENT. For a period of ten years from the commencement of the Constitution the Government of every State in Part B shall be under the general control of the President, that is in effect of the Government of India, and shall comply with such particular directions as may from time to time be given to them by the President. The period of ten years may be prolonged or shortened by Parliament by law in respect of any State. The object of this provision is to secure good and efficient administration in these States after the establishment of popular Governments in them. The fact could not be

ignored that these States had not attained the same level of administrative efficiency and modernity as had the former British Indian provinces which have now become Part A States. The President's control is found in practice to be exercised by the appointment of Regional Commissioners who act as Advisers to the Rajpramukhs and are Agents of the Government of India in several matters, by previous scrutiny of legislative proposals in these States, by approval of their Budget estimates and by advice in respect of appointments to key posts in the State Services.

ADMINISTRATION OF PART C STATES. States specified in Part C will be administered by the President and he may appoint for that purpose a Chief Commissioner or a Lieutenant-Governor, or may act through the Government of a neighbouring State after consulting its Government and ascertaining the views of the people of the State to be so administered. Parliament may by law create or continue for any such States in Part C a Legislature consisting of members either nominated or elected or partly nominated and partly elected, or a Council of Advisers or Ministers; the constitution, powers and functions of such a Legislature and the Council of Ministers will be specified in the law. Such law is not to be deemed as an amendment of the Constitution. Legislatures in Part C States will not thus be entitled *ipso facto* to exercise legislative powers in respect of subjects enumerated in the State Lists. Parliament may by law constitute a High Court for a State specified in Part C or declare any court in any such State to be a High Court for all or any of the purposes of the Constitution. Every High Court exercising jurisdiction immediately before the commencement of the Constitution in relation to any State in Part C shall continue to exercise such jurisdiction.

It may be noted that legislation giving greater control

to the people in Part C States over their Government was passed by Parliament in August 1951. The idea was not to establish fully-fledged responsible Ministries but something like a dyarchical form of administration. These States are not yet considered to be ripe for exactly the same status which is enjoyed by Part A or Part B States. It is even possible that some of them may not retain their distinctive identity but may conveniently be merged in a coherent adjacent territory belonging to a bigger State. The distinction between Part A, Part B and Part C States may have been inevitable during the transitional period after Independence. But it is also inevitable that the distinction must ultimately vanish and all States must be elevated to the enjoyment of full autonomy under the federal structure comprising the whole country.

19

THE STATE EXECUTIVE: THE GOVERNOR

PARLIAMENTARY GOVERNMENT IN THE STATES. As in the case of the Union, the Executive in the State Government consists of a constitutional head designated as the Governor and a Council of Ministers responsible to the Legislature. The parliamentary system applies as much in the States as in the Union and all the peculiarities of the system which have been described in an earlier chapter[1] and which are intended and expected to be in operation in the Union will also operate in the States. According to the strict letter of the law the Governor will have considerable powers both in regard to legislation and in regard to administration but he is not supposed to exercise them himself. It is the responsible Ministry which will be in real charge of the direction of the affairs of the State and will therefore exercise all the powers that are vested in the Governor. This fact must be borne in mind when studying his powers and functions. The adoption of the Parliamentary system in the States is not left merely to convention. In its important particulars it is provided for by the Constitution itself. It cannot happen that a Ministry working on the principle of political responsibility functions at the Centre and something analogous to the Presidential form of government functions in the States. Consistently with their autonomous status as constituent units in a federation, the States may have the discretion and liberty to carry on

[1] Pt. II, ch. 9.

the Government in their own way and according to their own lights in the sphere that is specially demarcated for them. But there can be no radical difference in the principles underlying the political methods of running the administration in the different parts of the country or between them and the Centre which integrates them.

APPOINTMENT OF THE GOVERNOR. The appointment of the Governor is made by the President. This is a departure from the law of the U.S.A. where the Governor of a State is directly elected by the people of the State. In Australia the Governor of a State is appointed by the Crown, but before this happens the Prime Minister of the State concerned is consulted in practice. In Canada, Lieutenant-Governors are appointed by the Governor-General-in-Council, that is practically by the Dominion Ministry. In accordance with the principles of the parliamentary system, the President of India, when appointing the Governor of a State, will have to consult the Union Cabinet and act on its advice. In fact the initiative in this respect will lie with the Ministry. It is also desirable that a convention should grow that the Union Ministry before making their recommendation to the President will consult the Ministry of the State concerned, and will, as far as possible, place at the head of the State a person who is acceptable to its people. Perhaps such a convention is already being established. It has also been the practice since 1947 to appoint prominent and distinguished personalities of one State to be Governors of other States.

The underlying idea of such an arrangement seems to be twofold; firstly, to give to the State a Governor who being an outsider will be in a position to take a more objective view of things and tender advice to Ministers

without being materially affected by internal party politics. Such advice given by men of eminence and independence should prove valuable to any Minister. Secondly, the choice of a person belonging to one State to be the head of any other State does, by the very fact of such a free interchange, emphasize the essential unity of the country in spite of its vast size, the heterogeneous character of its people and the autonomy possessed by the States as federal units. It will help in maintaining and fostering a common Indian consciousness in the midst of all the diversity of local populations and of their local politics, and in promoting a common standard of administrative efficiency and a uniformity of the broader constitutional traditions throughout the country.

REASONS FOR NOMINATION BY THE PRESIDENT. This method of the appointment of the Governor was criticized in the Constituent Assembly mainly for two reasons. Firstly, because it is nomination and not election by the people, and secondly, because it is nomination by the President who is the head of the Union Government. It was pointed out as a fundamental principle of democracy that all such high officials ought to be directly elected by the people. Appointment by nomination deprives the people of a valued privilege and also of a valuable opportunity of self-assertion and self-education. The reply to this criticism was that the parliamentary form of Government has to operate in the State and that therefore the Governor, strictly speaking, will have no functions to perform on his own initiative but only on the advice of Ministers. He is merely a nominal head and his personality will always be in the background in day-to-day administration because he will have no active or decisive part to play in its conduct. It would be losing all sense

of proportion to incur the very heavy expenditure of time, energy and money that would be involved in the direct election by adult franchise of such a ceremonial authority.

Further, if he were so elected he could justifiably claim to speak for the whole people as much as the Chief Minister and his Cabinet can claim to do, and might not find it congenial to be treated as an exalted but a lifeless rubber stamp. This might result in occasional but vexatious and unbecoming disturbances in the work of Government and cause that kind of clash which is proverbially associated with two swords put in the same sheath. There was also another argument. It was agreed that elections play the most vital role in the mechanism of democracy and have an immense educational value. But it must also be remembered that even in advanced countries electioneering inevitably tends to deteriorate to some extent into a vulgar exchange of coarse, untruthful and unworthy propaganda, and to lure the masses below the standards of ordinary decency in social and public life. There is therefore no point in prescribing elections when they are not really necessary.

The fear was expressed that nomination of the Governor by the President might give an opportunity to the Central Government to interfere in an unwarranted manner in the affairs of a State by exercising control over its head who was practically appointed by them, and who was also liable to be recalled or dismissed by them. This would be an indirect and insidious encroachment on the autonomy of the States even in matters which are supposed to have been vested in them by the Constitution. It might be in keeping with the pronounced bias in favour of centralization which was evinced by the framers of the Constitution, but could not be considered

to be compatible with what has been accepted as the federal doctrine. Such a fear must, however, be considered to be rather misplaced because the working of the principle of political responsibility automatically precludes the Governor from any active participation in the work of Government, and any interference by him in the decisions and policies of Ministers is clearly ruled out. The head of the State, because of the way in which he is appointed, may be considered to be the agent of the Union Government, but unlike the Governor of a province under the Act of 1935 he has now no functions to perform in his discretion or in his individual judgement, except in the case of the Governor of Assam who has to act in his discretion in a very small number of matters concerning the tribal areas. It means that all the functions and powers vested in the Governor by the Constitution will really be exercised, in accordance with the Constitution, by the Ministers. And therefore as long as the conventions and the general spirit of the Parliamentary system are respected and loyally adhered to, it cannot be conceded that the appointment of the Governor by the President constitutes, in itself, any substantial step in the direction of centralization.

Term of Office. The Governor holds office during the pleasure of the President. The term of his office is five years from the date on which he enters upon it, and he will continue to hold it until a successor has taken charge. He is free to resign his office before the term of five years has expired. He can also be removed from office by the President at any time; the power to do so is implied in the provision that the Governor holds office during the pleasure of the President. No provision is made for the removal of the Governor by the process of

impeachment as in the case of the President. Whether the Legislature of a State, if for any reason it were convinced about the unfitness of the Governor to continue to hold his office, would be able to take any action for the purpose of expressing its disapproval of his continuance is not quite clear; in any case the matter would have to be represented to the President by the Ministry and the final decision left to him.

SALARY AND ALLOWANCES. The Governor is entitled to receive such emoluments, allowances, and privileges as may be determined by Parliament by law, and until Parliament has passed any such law he will receive a salary of Rs 5,500 per month, and such allowances as were payable to the Governors immediately before the commencement of the Constitution. The emoluments and allowances which he gets shall not be diminished during his term of office. The Governor cannot hold any other office of profit. He will be entitled, without payment of rent, to the use of his official residences. Though he is appointed to be the head of a State, and though his duties will be concerned entirely with the affairs of the State, the authority which has to fix the Governor's salary, allowances, and other privileges is not the State Legislature, but Parliament. A uniformity of practice in this respect throughout the country can thus be ensured.

QUALIFICATIONS. No person shall be eligible for appointment as Governor unless he is a citizen of India, and has reached the age of 35 years. In the case of the President it is laid down that he must be a person who is qualified for election as a member of the House of the People, and must not hold any office of profit under the Government of India or the Government of any State. No such qualifications are mentioned in the case of a

Governor, though it is made clear that after his appointment he cannot hold any other office of profit whether under the Government or under any other employer. The Governor shall not be a member of either House of Parliament or of a House of the Legislature of any State; if a member of any of these legislative chambers is appointed Governor, he shall be deemed to have vacated his seat in that body on the date on which he enters upon his office as Governor.

EXECUTIVE POWER OF THE STATE. The executive power of a State is vested in its Governor and is exercised by him either directly or through officers subordinate to him, in accordance with the Constitution. Parliament or the Legislature of the State can confer by law functions on any authority subordinate to the Governor. The executive power of a State extends to matters with respect to which the Legislature of the State has power to make laws, which means that a State will have exclusive authority in respect of subjects enumerated in the State List. The State will also have powers regarding subjects mentioned in the Concurrent List, except when Parliament has also passed a law in regard to that subject and executive power pertaining to it has been conferred upon the Union or its authorities. The powers of a Governor are in fact analogous to the powers of the President which have been explained in an earlier chapter and to which a reference may be made.[1] He cannot, of course, have any diplomatic or military power, nor has he been given any special emergency powers. But with this exception the account given of the President's powers will more or less apply to him, the only difference being that whereas the President's authority extends to the

[1] See Pt. II, ch. 10.

whole country, the authority of a Governor is limited to the area of a State.

Powers of the Governor. All the executive action of a State is taken in the name of its Governor. He can make rules for prescribing how orders and instruments executed in his name shall be authenticated, and rules for the more convenient transaction of the business of the Government of the State and for allocation of business among the Ministers. The power of appointing Ministers technically belongs to him and they are supposed to hold office during his pleasure. Such a provision can have little significance in actual practice because it is also laid down that Ministers collectively must have the confidence of the Legislature and be responsible to it. The Governor must therefore appoint only such persons to be Ministers as have the backing of a clear majority of the Legislative Assembly of the State. The Legislature of a State is composed of the Governor and one or two chambers as the case may be, though he himself is precluded from being a member of any chamber. He can address the chambers, send messages to them, and summon, prorogue and dissolve them. He causes the annual financial statement to be placed before the State Legislature, demands for grants to be made and recommends money Bills for the consideration of the Houses. His assent is required for all Bills passed by the State Legislature; he may give or withhold that assent or reserve any Bill for the consideration of the President. The Governor has the power of issuing ordinances when the Legislature is not in session. They cannot be issued in his discretion but on the advice of Ministers and must be placed before the Legislature after it has assembled again. Such ordinances will cease to operate at the end of six weeks after the reassembly

of the Legislature unless they are disapproved earlier by that body. He can grant pardons, reprieves, respites or remissions of punishment or suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.

OATH OF OFFICE. Every Governor before entering upon his office has to take an oath or make an affirmation in the presence of the Chief Justice of the High Court of the State or, in his absence, the seniormost judge of that Court available, that he will discharge his functions faithfully and will to the best of his ability preserve, protect and defend the Constitution, and that he will devote himself to the service and well-being of the people of the State. The oath is a moral instrument for enforcing loyalty to duty (which latter is clearly defined by the letter of the law).

THE ROLE THAT A GOVERNOR CAN PLAY. It must again be emphasized that this long enumeration of the powers of the Governor should not be allowed to create the impression that an abnormally large authority is concentrated in his hands. He is merely a constitutional and a symbolic head, possessing practically no powers in reality and acting always on the advice of his Ministers. The role that he is called upon to play cannot be any other than the role of a respectable and impartial dignitary, standing above the vortex of party politics and always available to the State Government for consultation and guidance whenever leaders of that Government are inclined to seek them. Controversial issues are likely to be viewed by him in the correct impersonal perspective; proposals of major deviations from existing policies and of the adoption of new lines of approach to public problems that may emerge

from the Ministry can be scrutinized by him with a certain degree of detachment. He can point out possible difficulties and objections as he visualizes them and even suggest alternative methods. But there his responsibility ends. The final decisions must be taken by the Ministers and the Governor must accept them. Much will depend upon the nature of his personality. If he really takes a keen and informed interest in the social and political problems that face the people of the State of which he is the head, the indirect influence that he is able to exercise over the course of the administration may not be entirely negligible. It may also be noted that even a formal head has his own value in the working of a State. He contributes the stabilizing factor in an atmosphere of political fluctuations, and supplies to the people that ornamental symbol which represents their unity, appeals to their imagination and to some extent even to their love of pageantry.

No Deputy-Governor. There is no office in a State corresponding to the office of the Vice-President of the Union. If for any reason the Governor is not able to perform his duties, there will be no officer to step automatically into that office. Power is given to the President to make such provision as he thinks fit for the discharge of the functions of a Governor when he is found to be unable to perform them. The Legislature of the State has no power in this respect. No provision was made in the Constitution for the appointment of a Deputy-Governor because it was felt that he would normally have no duties to perform and the creation of such a high office would be an unnecessary waste. The Vice-President of the Union is the *ex-officio* Chairman of the Council of States and it is an important function. On the other hand, the upper chamber does not exist in every State, and even

where it exists it has not that importance which the Council of States has in the Union. There was therefore no justification for creating *ex-officio* Chairmen for such upper chambers under the name of Deputy-Governors.

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THE STATE EXECUTIVE: THE COUNCIL OF MINISTERS

RESPONSIBLE MINISTRIES IN EVERY STATE. The most important part of the State Executive, as it is also of the Union Executive, is the Council of Ministers or, as it is usually called, the Ministry or Cabinet. The significance of the Cabinet and of the vital role that it plays in the working of parliamentary government has already been explained.[1] The Constitution has laid down that for every State there shall be a Council of Ministers, with the Chief Minister at the head, to aid and advise the Governor in the exercise of his functions, excepting in so far as he is required under the Constitution to exercise any of his functions in his discretion. There will therefore be uniformity of constitutional practice and traditions throughout the country and it may be expected to create a broad political and national homogeneity within the federal structure. It is only the Governor of Assam who is entrusted with two minor discretionary functions in respect of the tribal areas of that State. No other Governor has been given any functions to be exercised in his discretion. The Ministry must be consulted by the Governor in all matters. As a matter of fact, it is the Ministry which rules over the State, lays down policies and supervises the conduct of the administration. It is their responsibility to formulate schemes of social progress and to take adequate and effective measures to implement them.

[1] See Pt. II, chs. 10 and 11.

APPOINTMENT OF MINISTERS. The Chief Minister shall be appointed by the Governor, and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister. But the Governor's choice must in practice be necessarily confined to that leader and to that party which are known to have secured the confidence of the electorate after a general election. There can be no other option or alternative to the Governor, particularly as long as political parties are efficiently organized and disciplined and one such party is able to win a clear majority of seats in the lower, that is the popular, House of the Legislature. This House elected by adult franchise can be taken to reflect fully and faithfully contemporary public opinion and the support of a majority of its members must be taken to be equivalent to the support of a majority of the population in the State. The Chief Minister thus owes his office really to the voice and the vote of the people and his selection by the Governor is merely a legal formality.

The Chief Minister is free to select his own team: his close associates and trusted comrades will be appointed to hold different portfolios and help him in carrying on the work of governing and fulfilling the promises that were made at the time of the election. The allocation of work among Ministers is described in law to be the function of the Governor. But obviously this also must be considered to be an empty technicality. One special provision must, however, be noted in this connexion. It testifies to the sense of urgency with which those who framed the Constitution viewed the problem of retrieving the backward and more unfortunate sections of society and bringing about their speedy uplift. The Constitution makes it obligatory that in the States of Bihar, Madhya Pradesh and Orissa, there shall be a Minister in charge of tribal welfare who

may, in addition, be in charge of the welfare of the Scheduled Castes and backward classes or of any other work.

Qualifications of Ministers. The only qualification prescribed for becoming a Minister is that the person so appointed must be a member of the Legislature of the State. In the nature of things, such membership implies the possession of certain qualities the cumulative result of which is to give such a degree of popularity to the person concerned that he is able to secure the support and the votes of a majority of the electors.[1] These qualities are not capable of precise or exact definition. They are not dependent merely upon the prosperous economic condition of the candidate or his high family status or impressive academic achievements, though all these factors may be immensely helpful. What is certain and obvious is that, in order to be able to establish himself in the esteem of his fellow citizens, the candidate should have some amount of public service to his credit, and some reputation as a man of standing, ability and character. In modern democracies persons of very slender means, modest education, and born in places near the lowest rungs of the social ladder have worked their way up to parliamentary eminence and ministerial position by dint of sheer hard work, selfless tenacity and force of personality. With the full realization of the democratic ideal, artificial handicaps created by poverty and its inevitable consequences are expected to be completely eliminated.

Usually only such persons will be selected to be Ministers as have already successfully contested seats in the Legislature. But it may sometimes happen that the Chief Minister finds it convenient to select a man who may not have stood for election or found a place in the Legislature. In

[1] See Pt. II, ch. 11.

such a case, though the appointment may initially be made, the person so appointed must, within six months of his assumption of office, find for himself a seat in the Legislative Assembly or in the Legislative Council if that Upper Chamber exists in the State. Otherwise he will have to cease to be a Minister. In fact unless the party leaders are sure of finding him such a seat, the Chief Minister will not take the risk of appointing him. An obliging friend and supporter of the party who holds what is believed to be a safe constituency may be persuaded to resign, and the vacancy that will thus be created may be filled by the Minister successfully contesting the bye-election; or he may be nominated to the upper chamber, because there are a few seats in that chamber to be filled by nomination by the Governor, that is in practice by the Ministry.

THEIR TENURE OF OFFICE. Ministers are supposed to hold office during the pleasure of the Governor, that is as long as they enjoy the confidence of the Legislature. In the parliamentary system it is not possible to specify any particular period for the tenure of office by a Minister. It can normally be presumed that once they assume office after elections on the strength of the fact that a majority of the seats in the Legislature have been won by them, they will continue to hold it till the expiry of the tenure of the lower chamber, that is the Legislative Assembly of the State, a tenure which is prescribed to be for five years. It may be that in the elections held thereafter the same party is returned to power, and in that case many of the old Ministers may be retained in the new Ministry, though probably with a change of portfolios. Quite a few political leaders in England are known to have held office as Ministers continuously for a decade and even more. On the other hand, there have also been instances of Ministries

which had to resign even before the five years' tenure of the Legislature had expired. Sometimes and quite unexpectedly, a Ministerial proposal may evoke very severe criticism even from members of the ruling party and supporters of Government; it may come as a very disagreeable surprise; but rather than compromise in respect of what the Ministry imagines to be fundamental principles involved in the measures proposed, they may feel it more honourable and in the best interest of the community to tender resignation of their office and step aside. Such occasions are of course very rare because no profound cleavage of opinion and outlook would normally exist or would be allowed to remain unbridged between the leaders of a party and their followers in the country.

Salaries and Allowances. Ministers shall be paid such salaries and allowances as the Legislature of the State may from time to time by law determine; until the Legislature passes any such law they will be paid such salaries and allowances as were payable to Ministers in the corresponding province or the corresponding Indian State, as the case may be, immediately before the commencement of the Constitution. This is an important power in the hands of the Legislature; through its instrumentality it can exercise complete control over the actions of Ministers and the administration of the departments in their charge. Because the salaries are to be voted every year in the case of every individual Minister when passing the Budget, members of the Legislature necessarily get the opportunity of examining the Government's policies and executive actions and of ventilating their grievances about them. Cut motions in the demands for the grant of salary to Ministers may be made both by members of the party in power and also by members of the parties in opposition,

the underlying purpose being not to effect a reduction in the salary but to get an opportunity of telling the Government what they feel about their administration and activities. Such motions are not usually pressed to a division; even if they are so pressed, there is very little chance of their being passed as long as the party in power has got behind it the unquestioned support of a majority of the members of the Legislature.

Collective Responsibility. The State Ministry, like the Union Ministry, works on the principle of collective responsibility, coming into office together and going out of office also together.[1] In fact, in the parliamentary form of government the strength of a Ministry lies in its collective existence and collective operation. As they are members of the same political faith and swear by the same social ideology, occasions of serious differences of opinion among them are not very likely. If in exceptional circumstances, they do arise, the person who finds himself in disagreement with his leader and his colleagues decides to withdraw from the Ministry rather than be an impediment to its smooth and harmonious working. The Chief Minister can also demand the resignation of a Minister if the general trend of his thought is found to be discordant with the views held by the Ministry as a whole. The portfolio system facilitates the operation of collective responsibility, because matters of a routine nature and of lesser importance are left to be disposed of by an individual Minister in his discretion but the more momentous issues both in regard to policy and administration must be submitted to the scrutiny of the Chief Minister and the whole body of the Cabinet. An endeavour is made to arrive as far as possible at unanimous decisions at the meetings of the

[1] See Pt. II, ch. 11.

Cabinet. At any rate, no decision can be taken which runs counter to the clear inclinations of the majority. Common sense has to play a large part in the successful working of the portfolio system because the relative importance of particular items which come up to the Minister for disposal is left to his judgement. Sometimes he may commit a serious error of judgement in finally disposing of a matter without reference to the Chief Minister or the Cabinet, and in a manner which may subsequently be found to be entirely unacceptable to them. In such a situation he resigns his office and keeps away for some time from ministerial life. But it may only be a temporary eclipse, unless the accusation against the Minister was really of a serious nature and carried the shadow of moral turpitude. Otherwise, after the storm which had necessitated the resignation has blown over, the Chief Minister may again invite his erstwhile colleague to join the Government.

PARTY SYSTEM AND THE CHIEF MINISTER. The successful working of parliamentary government depends to a great extent upon the existence of well-organized political parties[1] which put clear programmes and policies before the country and take steps to cultivate public opinion in their favour. The party system, with all its many defects, is a useful instrument for the political education of the masses. It helps in clarifying ideas and ideals and in focusing public attention on definite issues. The party machinery powerfully contributes to the task of shaking off the general apathy and inertia of the masses and of rousing them to a consciousness of their own supreme power in the State. Leaders of such parties are destined to become Ministers and their leader becomes the Prime

[1] See Pt. II, ch. 11.

Minister or the Chief Minister. The Chief Minister plays the same important role in the government of a State that the Prime Minister[1] plays in the Union. He keeps the Ministry together, persuades the Legislature to sanction various legislative measures for the implementation of party programmes, and directs the operation of the administrative machine for achieving the same object. The Chief Minister is expected to take the initiative in solving all problems which confront the people and is in fact the acknowledged political leader of the State, possessing in a great measure both popularity and prestige.

It is the duty of the Chief Minister (*a*) to communicate to the Governor all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation, (*b*) to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for, and (*c*) to submit, if the Governor so requires, for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council. This corresponds to a similar duty imposed upon the Prime Minister of the Union in relation to the President.[2] The purpose is not to invest the Governor with any active power of governance or of interference in the day-to-day administration of the Ministers. The only privilege that a constitutional head can legitimately claim is the privilege of being fully informed about the policies, proposals and executive decisions of Ministers, and to have the opportunity of expressing his opinion on them, particularly if he feels that they have not been conceived on right lines and require to be modified and revised in certain direc-

[1] See Pt. II, ch. 11. [2] ibid.

tions. This privilege has been specifically conceded to State Governors by the Constitution. Any action by an individual Minister without reference to his colleagues and in regard to which the Governor feels that it was not rightly taken can be brought by him to the notice of the Cabinet with a request that it should be reconsidered by that body. There is no question of the Governor imposing his will on the Ministry; he can only tender friendly advice which may or may not be accepted.

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THE STATE LEGISLATURE: THE LEGISLATIVE COUNCIL (OR VIDHAN PARISHAD)

THE LEGISLATURE IN MODERN DEMOCRACY. Democracy is not merely a concept. It is also a Government and therefore a concrete reality. It must have an operative mechanism in which will be manifested the distinctive attractions of democratic philosophy. At the same time, the mechanism must be possessed of all that strength, efficiency, quality and competence which are essential for a satisfactory fulfilment of democratic ideals. In modern times it is the Legislature which automatically supplies such a mechanism. By the method of its election and formation it epitomizes the nation; by the nature of its comprehensive powers of social regulation, it embodies the doctrine of popular sovereignty; by a broadminded, effective and judicious exercise of those powers, including the power of creating, controlling and dismissing Ministries, it is in a position to enable the people to realize those objectives of equality and justice, of happiness and joy in a full life, which human society naturally cherishes and ambitiously sets out to achieve. Legislatures in the autonomous States of the Indian Federation, like Parliament in its Central Government, have to be viewed in this perspective. Their constitution, franchise, powers and functions, rules of procedure, etc., have to be studied so that it should be possible to assess the potentialities of their contribution to the larger social life of the State.

THE BICAMERAL SYSTEM. In Western democracies, the Legislature is composed of two chambers, one elected on the principle of adult franchise and representing the general populace including the poorest and most backward sections of society, and the other representing more or less the propertied classes with a sprinkling of intellectuals. The upper or second chamber is intended to serve as a kind of brake on the actions of the lower, that is popular, chamber. The belief was commonly held in the past, and is held even now to some extent, that it is risky to vest political power in the hands of the masses because they are not adequately educated and are liable to be swayed by irresponsible leaders by unscrupulous but eloquent appeals made to their passions, ignorant beliefs and indiscriminate enthusiasm. The steadier and more sober elements in the community with all their knowledge, experience and wisdom ought to be put in a position to control and correct the waywardness of their simple-minded but impulsive brethren. It is emphasized that democracy does not mean a licence for disruption or for fatal inefficiency. On the contrary, it must necessarily stand equated to intelligent direction and a really progressive and creative governance. Men of status and substance possessing that balanced outlook and temperament which are generally ascribed to education and to the possession of property are as valuable in the performance of the legislative and other important functions of the Legislature as men directly drawn from the toiling masses. This idea held the political field for several generations and the upper chamber, representing what may be described as the upper classes of society, was specially constituted to work in conjunction with, if not in a position of superiority to, the lower chamber.

SECOND CHAMBER NOT IMPORTANT. With the rise in the general level of education of the masses in the twentieth century as a result of the material progress made possible by science, the whole basis of the old justification for the existence of an aristocratic chamber has become shaky. Even granting for the sake of argument the truth of the alleged equation between wealth and family traditions on the one hand, and education, quality and a sense of responsibility on the other, it would not be correct to describe the masses of modern times as being thoroughly ignorant and uninformed and liable to be easily duped by political charlatanry. Rather, the experience has been that some very able and learned leaders, notwithstanding their unostentatious way of living and behaviour and general lack of self-advertisement, have been elected to Parliament by constituencies composed mostly of the masses.

THE FUNCTION OF DELAY. In these changed circumstances, even though the second chamber still persists, it has lost, excepting in a federation, all its old powers and prestige. It can no longer hold up legislation accepted by the lower chamber, nor can it interfere with the scheme of national expenditure and taxation adopted by the popular House. The only effective purpose that it serves in most countries today is to secure the postponement of the final passing of a law by one or two years. That is all. Such a delay is merely intended to give an opportunity for the cooler consideration of controversial measures, after the heat of discussion has subsided and a more tranquil atmosphere has been established. Whether the performance of such a comparatively simple function as causing delay of a year or two warrants the creation, or the continuance of, an expensive mechanism like the upper chamber is open to question. Writers on politics have

pointed out that in the context of modern notions and conditions the so-called upper chamber has become a complete superfluity and a waste if not a misfit. It unnecessarily duplicates the legislative process and lengthens the political routine by monotonous and infructuous repetition. It is true that no nation has yet gone to the length of completely eliminating the second chamber. Still, its *raison d'être* is seriously questioned, particularly in the case of small nations having a unitary constitution.

NO NEED FOR A SECOND CHAMBER. There were no upper chambers in the provinces of British India until the Act of 1935. The Montford Reforms of 1919 created an upper chamber, the Council of State, in the Central Legislature but did not propose any such innovation in the provinces. There really seems to be no need to introduce the cumbrousness and the futility of the bicameral system in the autonomous States of the Indian Republic. After all, such States have no status of independence nor are they burdened with all those responsibilities which necessarily lie on the shoulders of a sovereign State. They are part and parcel of the framework of a national polity which has a strong central government. The sphere of their activity is limited, both in regard to the territory under their jurisdiction and also in regard to the number of subjects that are assigned for the exercise of their authority. It is also entirely out of tune with the democratic spirit of modern times to give special representation in a separate chamber to vested interests by prescribing high property and income qualifications for its franchise. And if that is not done there can be no other clearly marked out and really distinctive standard for elections to the upper chamber. It is more than likely that any electorate which is not formed specially

on the basis of property or income will not be materially different in political complexion from an electorate formed on the basis of adult franchise. The whole arrangement may therefore prove to be insipid and devoid of any recognizable propriety.

SECOND CHAMBERS CREATED BY THE CONSTITUTION. The fact that the framers of the new Indian Constitution were remarkably dominated in this respect (as, indeed, in several others) by the influence of the Act of 1935 is evidenced by their disinclination to suggest a bold departure from the scheme of that Act in regard to the establishment of a second chamber in some of the provinces. They actually recommended the continuance of the same provisions in the new framework. But even their conviction in regard to the utility of the second chamber in the States appears to have been rather uncertain because the Constitution has provided a normal procedure for the abolition of these chambers (and also for their new creation) without such a change being considered to be an amendment of the Constitution. The second chambers that they have provided are small bodies having, in the nature of things, very little distinctive about their composition and not endowed with any effective powers, so that it is difficult to disagree with the criticism that their creation is completely out of accord with any sense of constitutional proportion or propriety.

THE ABOLITION OR CREATION OF A SECOND CHAMBER. The Constitution lays down that in the States of Bihar, Bombay, Madras, Punjab, Uttar Pradesh and West Bengal there shall be a Legislature consisting of the Governor, the Legislative Council and the Legislative Assembly. In the other States it will be composed of the Governor and the Legislative Assembly, no Legislative Council being

provided. It has also further laid down that Parliament may by law provide for the abolition of the Legislative Council of a State having such a Council, or for the creation of such a Council in a State having no such Council, if the Legislative Assembly of the State passes a resolution to that effect. Such a resolution to be passed must have the support of a majority of the total membership of the Assembly and of the majority of not less than two-thirds of the members of the Assembly present and voting. Any such law passed by Parliament shall contain such provisions for the amendment of the Constitution as may be necessary to give effect to the provisions of the law, and may also contain such supplemental, incidental and consequential provisions as Parliament may deem necessary. Such a law will not be considered to be an amendment of the Constitution. It will be seen that the abolition or the creation of the second chamber in a State is not left in the hands of the people of the State. They have to make the necessary recommendation to Parliament which represents the whole country. It may be expected that Parliament will generally act in accordance with the wishes expressed by the people of the State through the proper constitutional channel; but no such action is made legally obligatory on them. The object seems to be to harmonize any major change in the political set-up of any part of the country with the general trends of political opinion in the whole country.

Composition of the Legislative Councils. The total number of members in the Legislative Council of a State shall not exceed one-fourth of the total number of members in the Legislative Assembly of that State, but the total number of members in the Council shall in no case be less than forty. Until Parliament by law otherwise

provides, the composition of the Legislative Council shall be as follows. Of the total number of its members (*a*) as nearly as may be, one-third shall be elected by electorates consisting of members of municipalities, district boards, and such other local authorities in the State as Parliament may by law specify; (*b*) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any university in the territory of India, or have been for at least three years in possession of qualifications prescribed by any law made by Parliament as equivalent to that of a graduate of any such university; (*c*) as nearly as may be, one-twelfth shall be elected by an electorate consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school, as may be prescribed by law made by Parliament; (*d*) as nearly as may be, one-third shall be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly; (*e*) the remainder shall be nominated by the Governor and shall consist of persons having special knowledge or practical experience in respect of such matters as the following—literature, science, art, the co-operative movement, and social service. For the purpose of election territorial constituencies may be prescribed by law made by Parliament, and elections in all cases shall be held in accordance with the system of proportional representation by means of the single transferable vote.

In exercise of the powers granted to Parliament, that body has passed two Acts, the Representation of the People Acts, 1950 and 1951. The allocation of seats in the Legislative Councils has been prescribed in the Third

Schedule of the Act passed in 1950 and is reproduced below:

ALLOCATION OF SEATS IN THE LEGISLATIVE COUNCILS

Names of States	Total number of seats	Number to be Elected or Nominated under Article (3) of the Constitution				
		Elected by local bodies	Elected by graduates	Elected by teachers	Elected by Legislative Assembly	Nominated by the Governor
Part A States						
Bihar	72	24	6	6	24	12
Bombay	72	24	6	6	24	12
Madras	51	14	6	4	18	9
Punjab	40	13	3	3	13	8
Uttar Pradesh	72	24	6	6	24	12
West Bengal	51	17	4	4	17	9
Part B States						
Mysore	40	13	3	3	13	8

It will thus be seen that no seat in the Legislative Council is filled by direct election. No effort is made to grant any special representation in it to the propertied classes, but provision has been made for the introduction of an academic element because a specific number of seats have been allotted to graduates' and teachers' constituencies. The Council cannot in any sense be described as an aristocratic chamber. It can afford the opportunity of a legislative career to those men of talent or those who have special knowledge or practical experience in respect of the arts, the sciences or social service, who will not be prepared to fight electioneering battles, or who may be prepared to do so only to a limited extent but who have

otherwise the aptitude and the ambition for parliamentary activity.

THE COUNCIL IS A PERMANENT BODY. The Legislative Council shall not be subject to dissolution, but as nearly as possible one-third of its members shall retire on the expiration of every second year, in accordance with the provisions made in that behalf by Parliament by law. The term of an individual member will be six years. This provision is exactly similar to the provisions made in respect of the Council of States, and the same advantages are expected to flow from a partial and periodical retirement of the members. A combination of continuity and freshness is aimed at by this arrangement, and it does not seem to be inappropriate in the case of an upper chamber which has really not much importance in constitutional working.

QUALIFICATIONS AND DISQUALIFICATIONS. A person shall not be qualified to be chosen to fill a seat in the Legislative Council unless he is a citizen of India and not less than thirty years of age; he will also be required to possess such other qualifications as may be prescribed in that behalf by any law made by Parliament. No person shall be a member of the Legislative Council and also of the Legislative Assembly of a State; if he is elected to both he must vacate one of the two seats in accordance with the law made for that purpose by the State Legislature. No person shall be a member of the Legislatures of two or more States; if a person is elected to more than one such Legislature, he must resign his seat in all but one of them within a specified time as may be prescribed in rules made by the President; if he does not make up his mind within that period in which Legislature he desires to function as a member, his seats in all the Legislatures to which he is elected shall become vacant.

If a member of a Legislative Council is absent for a period of 60 days from all its meetings without permission of the House, the House may declare his seat vacant; but in computing the period of 60 days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days.

A person shall be disqualified from standing as a candidate for election to the Council and also for being a member of it if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by the Legislature of the State by law not to disqualify its holder; if he is of unsound mind; if he is an undischarged insolvent; if he is not a citizen of India or has voluntarily acquired the citizenship of a foreign State; or if he is disqualified by any law made by Parliament. However, a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such State. It is obvious that ministerial office which is essentially political in character cannot be brought under operation of such a disqualification; otherwise parliamentary government itself will be impossible. The question as to whether a member of the Council has become subject to any of the disqualifications mentioned above shall be referred for decision to the Governor, and his decision shall be final, but before giving any such decision the Governor must obtain the opinion of the Election Commission and shall act according to that opinion.

Election of the Chairman. The Legislative Council shall choose one of its members to be Chairman and another to be Deputy Chairman, and the Council shall similarly fill any vacancies in these offices whenever they

may arise. The Chairman or the Deputy Chairman shall vacate his office if he ceases to be a member of the Council; he may also resign his office. All questions at any sitting of the Council shall be determined by a majority of votes of the members present and voting, other than the Chairman. The Chairman or person acting as Chairman shall not vote in the first instance, but he shall have, and exercise, a casting vote in case of an equality of votes. The quorum to constitute a meeting of the Council shall be ten members or one-tenth of the total number of members of the House whichever is greater.

The Chairman and the Deputy Chairman shall be paid such salaries and allowances as may be fixed by the Legislature of the State by law, and until such a law is passed they will be paid the salaries and allowances that were paid to the President and the Deputy President of the Legislative Council of the corresponding province immediately before the commencement of the Constitution. The Chairman or the Deputy Chairman may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council, but at least fourteen days' notice has to be given of the intention to move the resolution. While the office of Chairman is vacant, the duties of the office shall be performed by the Deputy Chairman, or if that office is also vacant, by such member of the Council as the Governor may appoint for the purpose. During the absence of the Chairman from any sitting of the Council, the Deputy Chairman shall act as Chairman; and if he is also absent, such person may act as Chairman as may be determined by the rules of procedure of the Council. The Chairman or the Deputy Chairman shall not preside at a meeting of the Council while any resolution for his removal is

under consideration. They will, however, have the right to speak in, and otherwise take part in, the proceedings but will be entitled to vote only in the first instance.

SESSIONS OF THE COUNCIL. The Legislative Council along with the Legislative Assembly must be summoned to meet twice at least in every year, and six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session. The Governor can summon the Council and prorogue it. He may address the Council, or the Council and the Assembly together, and may for that purpose require the attendance of members. He may send messages to the Council either in respect of a Bill then pending in the Legislature, or otherwise, and the Council shall with all convenient dispatch consider any matter required by the message to be taken into consideration. At the commencement of a session after general elections or of a session in the beginning of a year, the Governor shall address both Houses of the Legislature assembled together and inform them of the cause of its summons. Time shall be allotted in the Council for the discussion of the matters referred to in the Governor's address. The address will in fact be written by the Ministry and will contain an indication of what the Government proposes to do in regard to various important questions concerning the administration. Members of the Legislature thus get an opportunity of expressing their reactions to the general trend of the Government's policy and the debate on the address serves as a useful guide to Ministers in assessing the intensity of popular feeling on particular subjects.

POWERS OF THE COUNCIL. The powers of the Council pertain to the three usual categories, namely, legislation, control over administration and finance. Any Bill,

excepting a Money Bill, can originate in the Council and its assent is required for a Bill to be enacted into law. However, its power in this respect is not co-ordinate with the power of the Assembly. After all, it cannot be forgotten that the upper chamber in a constituent unit in a federation cannot have the same powers and status which similar bodies necessarily have in sovereign States or in federations. In the case of the Union Parliament, if there is a difference of opinion between the House of the People and the Council of States, the question is referred to a joint sitting of both the chambers; the opinion of the majority in the joint sitting will carry the day and the dispute is thus resolved. No such joint sitting is provided for in the case of disagreement between the upper and the lower chambers in a State. On the contrary it is clearly laid down that if after a Bill has been passed by the Legislative Assembly it is rejected by the Council, or the Council has not considered it even though more than three months have elapsed after it was submitted to the Council, or it is passed by the Council with amendments to which the Assembly does not agree, the Assembly may pass the Bill again and transmit it to the Council; if it is rejected by the Council again a second time, or the Council has not passed it even though more than one month has elapsed after it was submitted to the Council, the Bill shall be taken to have been passed by the Houses of the Legislature in the form in which it was passed by the Legislative Assembly for the second time, and with such amendments as may have been agreed to by that body.

The view of the Assembly must therefore ultimately prevail; the utmost that the Council can do is to impose some delay in the passage of the Bill, if it feels

that a reconsideration of the measure is urgently required in the public interest.

By putting questions and supplementary questions on all sorts of matters of public importance connected with the administration, by moving, discussing and passing resolutions on similar subjects, by moving motions of adjournment and of no-confidence, members of the Council can exercise some degree of control over the working of the Government. In regard to finance it is distinctly laid down that a Money Bill shall not be introduced in a Legislative Council. After such a Bill has been passed by the Assembly it shall be transmitted to the Council for its recommendations, and the Council shall within a period of fourteen days return the Bill to the Assembly with its recommendations. The Assembly may either accept or reject all or any of the recommendations of the Council and the Bill will be taken to have been passed as the Assembly has desired that it should be so passed. A Bill shall be deemed to be a Money Bill if it contains only provisions dealing with taxes, borrowing of money and the Consolidated and Contingency Funds. Voting of grants for national expenditure is not a privilege allowed to the Council.

THE STATE LEGISLATURE: THE LEGISLATIVE ASSEMBLY (OR VIDHAN SABHA)

A Democratic Chamber. In the six States in which the bicameral system has been introduced, the Lower House of the Legislature is called the Legislative Assembly. In the remaining States also it is known by the same name and, being the only chamber of the Legislature, functions by itself. The Assembly is intended to represent the whole population of the State and is a very democratic body in the Constitution. It plays the same part in the government of the State which the House of the People plays in the government of the Union and occupies a position of decisive importance in the politics of the State. Popular opinion is supposed to be fully reflected inside this chamber and it enjoys the same prestige that popularly elected Legislatures enjoy in a responsible democracy.

The Assembly shall be composed of members chosen by direct election and by adult franchise by the residents of a State. The representation of each territorial constituency formed for that purpose will be on the basis of the population of that constituency as ascertained at the last preceding census, and shall be on a scale of not more than one member for every 75,000 of the population. However, the total number of members in the Assembly shall in no case be more than 500 or less than 60. The ratio between the number of members allotted to each territorial constituency and the population of that consti-

tuency shall, as far as practicable, be the same throughout the State. Upon the completion of each census the representation of the several territorial constituencies shall be readjusted in the light of the census figures and the new information about the distribution of population made available by them. This salutary provision will make it impossible for any disparity to arise between the number of seats that are actually assigned to a constituency and the number to which it is legitimately entitled on the strength of its total population. Parliament will by law determine the authority which will bring about the necessary readjustment, and the manner in which and the date from which it should be made effective.

Composition of the Assemblies. The Representation of the People Act, 1950, prescribes the following:

Number of Seats in the Legislative Assemblies

	Number of seats
Part A States	
Andhra	140
Assam	108
Bihar	330
Bombay	315
Madhya Pradesh	232
Madras	230
Orissa	140
Punjab	126
Uttar Pradesh	430
West Bengal	238
Part B States	
Hyderabad	175
Madhya Bharat	99
Mysore	99
Patiala and East Punjab States Union	60
Rajasthan	160
Saurashtra	60
Travancore-Cochin	108

TENURE OF OFFICE. The Legislative Assembly will have a tenure of five years from the date appointed for its first meeting and no longer, and the expiration of the period of five years shall operate as a dissolution of the Assembly. This is a peremptory provision and is intended to prevent a self-satisfied Assembly from falling into the dangerous temptation of prolonging its life beyond the normal term in normal times. However, while a Proclamation of Emergency is in operation the period of five years may be extended by Parliament by law for a period not exceeding one year at a time, and not extending in any case beyond a period of six months after the Proclamation has ceased to operate. The Assembly may of course be dissolved before the period of five years has been completed. Such a contingency will arise only when the Ministerial party has a very small and precarious majority in the Assembly to support it or when the Government has unexpectedly lost the confidence of the Legislature within a short period of its being elevated to office. It may be noted for the sake of comparison that the upper chamber, unlike the Assembly, is not subject to a wholesale dissolution. The process of a total periodic cleansing is considered indispensable for the democratic chamber, because that is the only method by which it could be effectively saved from the danger of anachronism and loss of touch with the popular will.

QUALIFICATIONS AND DISQUALIFICATIONS. A person shall not be qualified to be chosen to fill a seat in the Legislative Assembly unless he is a citizen of India, is not less than 25 years of age, and possesses such other qualifications as may be prescribed by any law passed for that purpose by Parliament. No person shall be a member of the Assembly and also of the Council if the latter chamber

exists in a State; if a person is elected to both the chambers the law of the State will make provision for the vacation by the member concerned of one of the two seats. Similarly, no person shall be a member of the Legislative Assembly and of any other legislative chambers of any State; if he is elected a member of the Assembly and also of one or more of any such chambers, he will have to make his choice of only one chamber for the continuance of his membership. If he does not make the choice within such period as may be specified in rules made in that connexion by the President, his seat in the Legislatures of all the States to which he is elected shall be declared to be vacant.

If a member of the Assembly is absent without the permission of the House from its meetings for a period of 60 days, the House may declare his seat vacant but in counting the period of 60 days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days. A person shall be disqualified from being chosen as, and from being, a member of the Assembly if he holds any office of profit under the Government of India or the Government of any State, or if he is of unsound mind, or if he is an undischarged insolvent, or if he is not a citizen of India, or if he is disqualified under any law made by Parliament; however, a person shall not be deemed to hold an office of profit by reason only that he is a Minister either for the Union or for any State. This exception is inherent in the concept of parliamentary government; in the operation of this system the executive is created, controlled and dismissed by the Legislature. Ministers constitute the political executive as distinguished from the administration. It logically follows that not

only must they not be excluded from the Legislature but must actually hold the position of its leadership.

THE OFFICE OF SPEAKER. The Legislative Assembly has the power to elect one of its members to be the Speaker and another to be the Deputy Speaker, and elections to these offices must be held as often as the offices become vacant for any reason. The Speaker or the Deputy Speaker shall vacate his office if he ceases to be a member of the Assembly and he may at any time resign his office. While the office of Speaker is vacant its duties will be performed by the Deputy Speaker, and if the latter office is also vacant the duties will be performed by such member of the Assembly as the Governor may appoint for the purpose. During the absence of the Speaker from any sitting of the Assembly the Deputy Speaker will preside; if both are absent such person may preside as may be determined by the rules of procedure of the Assembly, or if no such person is present such other person may preside as may be determined by the Assembly. The rules of procedure have provided for the appointment of Chairmen. They are nominated by the Speaker from amongst the members of the Assembly at the commencement of every session and are generally four in number. Any one of them may be called upon to preside over the Assembly by the Speaker or the Deputy Speaker. All questions at any sitting of the Assembly shall be determined by a majority of votes of the members present and voting, other than the Speaker or person acting as Speaker. The Speaker shall not vote in the first instance but shall have, and shall exercise, a casting vote in the case of an equality of votes.

The Speaker may be removed from his office by a resolution of the Assembly passed by a majority of all

the then members of the Assembly; no resolution for this purpose shall, however, be moved unless at least fourteen days' notice has been given of the intention to move the resolution. At any sitting of the Assembly, while a resolution for the removal of the Speaker or the Deputy Speaker from his office is under consideration, they shall not preside though they may be present. They shall have the right to speak in, or otherwise take part in, the proceedings of the Assembly while any resolution for their removal from office is under consideration and shall be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings.

There shall be paid to the Speaker and the Deputy Speaker such salaries and allowances as may be fixed by the Legislature of the State by law, and until such a law is passed they shall be paid such salaries and allowances as were payable to the Speaker and the Deputy Speaker of the Legislative Assembly of the corresponding province immediately before the commencement of the Constitution. In the State of Bombay, according to the law as it is in operation at present, the Speaker gets a salary of Rs 850 a month and the Deputy Speaker Rs 250 a month.

SESSIONS OF THE ASSEMBLY. The Legislative Assembly must be summoned to meet twice at least in every year, and six months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session. The power of summoning, proroguing and dissolving the Legislative Assembly legally vests in the Governor. In practice, however, the power will be exercised by the Ministry. The enormous increase in the functions of the State in modern times, and the numerous laws and regulations that have to be enacted by it for the purpose of realizing the social ideals which

it has before it, has led to a consequential and corresponding increase in the work of the Legislature. It has therefore to be almost continuously in session and its members are required to devote to it their undivided attention and energy in order to be able to satisfy all the obligations that are entailed by membership of this body. In parliamentary democracy the Legislature is called upon not merely to make laws but also to bring into existence the ministerial executive and keep a vigilant supervision over their policies and actions.

The pressure of work on the Legislature was not heavy in the old days when the activities of the State did not touch the individual citizen's life excepting at a few points, and when it was not expected that the governmental machine should be utilized for regulating the details of human life in pursuance of particular ideologies. The Legislatures therefore used to meet at long intervals during the course of the year and the number of days of their actual sittings was also comparatively small. In the days of British rule, particularly before the Act of 1935, there was a general complaint in India that the bureaucratic government did not allow a sufficient number of days for the sittings of the Legislature and that its sessions were not held as frequently as was desirable. After all, government is a continuous, uninterrupted and living process and in a democracy the citizen has every right to be kept constantly in touch with all its operations. Otherwise his control over the Government will not be real. It has, therefore, become a truism of modern democratic polity that the Legislature which is the most vital mechanism in its functioning and which represents the general body of the citizens should be in almost continuous session, though there may be recesses and even longer vacations in order to

enable members to have the necessary rest and also to maintain their contacts with their constituencies. The Legislative Assembly as the popular House of the State Legislature will have the great responsibility of implementing the promises that were given to the electors at the time of elections, and its sittings and sessions must therefore be held for the major part of the year.

DEBATE ON THE GOVERNOR'S ADDRESS. The Governor may address the Assembly, or if there is the Council, the Assembly and the Council together, and may for that purpose require the attendance of members. He may also send messages to the Assembly, whether with respect to a Bill then pending in the Legislature, or otherwise, and the Assembly shall with all convenient dispatch consider any matter required by the message to be taken into consideration. At the commencement of every session at the beginning of the year or after a general election, the Governor shall address the Assembly, or if a State has a Legislative Council, the Assembly and the Council assembled together, and inform them of the cause of their summons. The rules regulating the procedure of the Assembly shall make provision for the allotment of time for discussion of the matters referred to in such an address from the Governor, and such discussion must have precedence over other business of the House.

As has already been explained, the Governor's address is really prepared by the Ministry and is intended to be a sort of review of the administration during the past few months and to give a broad outline of what the Government proposes to accomplish in the months to come. Discussion on the matters contained in the address serves a twofold purpose. It gives an opportunity to the elected representatives of the people who constitute the Legislature

to examine and to express their opinion on the plans and proposals put forward by the Government; this is a very healthy check on their leaders who have become Ministers. Secondly, from the point of view of the Government also, criticism expressed on the floor of the House both by friends and by opponents in regard to their general line of action or to any specific administrative measures is a very welcome corrective and guidance. They can also take the opportunity, while replying to criticism, of clearing misunderstandings and removing misapprehensions that may have arisen in the public mind about any of the schemes proposed by them. In short, it may be said that the address and the discussion on it serve as a sort of introduction to the course of political life as it is likely to develop in the State during the year which has just commenced.

Oath and Quorum. Every member of the Assembly before taking his seat shall make and subscribe before the Governor, or some person appointed by him, an oath or affirmation that he will bear true faith and allegiance to the Constitution of India, and that he will faithfully discharge the duty upon which he is about to enter. The quorum to constitute a meeting of the Assembly shall be ten members or one-tenth of the total number of members of the House, whichever is greater. If at any time during the meeting of the Assembly there is no quorum, it shall be the duty of the Speaker either to adjourn the House or to suspend the meeting until there is a quorum.

Powers of the Assembly. The powers and functions of the Assembly are threefold. No Bill can become a law in the State unless it has been passed by the Legislative Assembly. If in a State an upper chamber, that is the Council, is in existence and if that chamber refuses

to pass a Bill in the form in which it has been passed by the Assembly, the Bill can become law in spite of the opposition of the Council if it is passed again by the Assembly. All legislative power in the State, except the power of issuing ordinances when the Assembly is not in session which is vested in the Governor, is concentrated in the Assembly. This is as it should be because the Assembly elected by adult franchise, is a representative chamber reflecting the views and sentiments of the public for the time being.

Members of the Assembly can also exert a considerable check on the administration by putting questions and supplementary questions on the details of administrative working, by moving resolutions embodying recommendations on matters of public importance, by moving adjournment motions to discuss matters of urgent public importance and of recent occurrence and by moving votes of no-confidence in particular Ministers or in the whole Ministry. A persistent use of all these powers keeps the Government very alert and the fear of public exposure and occasionally even public condemnation helps to keep up a high standard of administrative efficiency and integrity.

As the popular chamber of the Legislature, the Assembly has full powers in regard to finance. All Money Bills must originate in the Assembly and they cannot become law unless passed by it. If there is an upper chamber, such Money Bills, after they are passed by the Assembly, have to be transmitted to that chamber, although it has no effective power in regard to them. If Money Bills are not returned by the Legislative Council to the Assembly within fourteen days of their receipt by the Council they will be taken to have been passed into law in the form in

which they have been passed by the Assembly. The Council may make recommendations in regard to the Bills, but the Assembly may or may not accept them. The voting of grants required for expenditure by the different departments of the State is the exclusive privilege of the Assembly which can reduce or reject but not increase them. No demand for grant is made before the Council.

SECRETARIAL STAFF. The Legislative Assembly shall have a separate secretarial staff. If there is a Legislative Council in a State, it is possible to create secretarial posts which are common to the Assembly and to the Council. The Legislature may by law regulate the recruitment and conditions of service of persons appointed to the secretarial staff of the House or Houses of the Legislature. The latter has thus at its disposal an independent executive machinery which is subordinate to it and which is entrusted with the task of satisfying the requirements of members in the performance of their duties. The secretarial staff will naturally be in close touch with, and will to a great extent be under the direct control of, the Speaker of the Assembly or of the Chairman of the Council as the case may be.

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PRIVILEGES OF MEMBERS AND PROCEDURE OF WORK

Freedom of Speech. A detailed explanation has already been given[1] of the necessity to confer certain privileges on members of the Legislature in order to enable them to fulfil their responsibilities in an adequate and satisfactory manner. Members of the Legislature in a State have been given the same privileges that have been given to Members of Parliament. For instance, it has been clearly laid down that there shall be freedom of speech in the Legislature of every State, subject however to the provisions of the Constitution and to the rules and standing orders regulating the procedure of the Legislature. No member shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or in any of its committees; and no person shall be liable in respect of the publication of any report, paper, votes or proceedings of the Legislature. In other respects the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature shall be such as may from time to time be defined by the Legislature by law. Until such a law is passed they shall be the same as those of the House of Commons in England as they existed at the commencement of the Constitution.

It need hardly be added that the privilege of freedom

[1] See Pt. II, ch. 14.

of speech is not entirely unrestricted and absolute. The rules of procedure and standing orders adopted by the Legislature make it obligatory that the matter of every speech must, in the opinion of the Speaker, be relevant to the matter before the House, must not use offensive or unparliamentary or defamatory or treasonable expressions, must not be used for the purpose of wilfully obstructing the business of the House, must not make a personal charge against any member, must not refer to any matter of fact on which a judicial decision is pending or reflect upon the conduct of a judge in the exercise of his functions, and so on. The Speaker shall decide all points of order that may arise and his decision shall be final. He may if necessary direct a member to discontinue his speech if the member persists in irrelevance or in tedious repetition of arguments. It is the duty of the Speaker to preserve order in the meetings of the Legislature and he has been given all powers necessary for the purpose of enforcing his decisions on all points of order. He may direct any member whose conduct is in his opinion grossly disorderly to withdraw immediately from the Assembly, and any member so ordered to withdraw shall do so forthwith. The Speaker may in the case of grave disorder arising in the Assembly suspend any sitting for a time to be named by him.

COMMITTEE OF PRIVILEGES. In some States, for example in West Bengal, the rules of procedure have laid down that a Committee of Privileges shall be constituted at the commencement of the first session in each financial year and shall consist of the Deputy Speaker who shall be Chairman and eleven other members who shall be elected by the Assembly according to the principle of proportional representation by means of the single trans-

ferable vote. Members of the committee shall hold office until the committee is reconstituted in the following year. All questions regarding privileges of members are referred to this committee which will contain members belonging to all parties in the House and the Assembly will be guided in taking its decisions by the recommendations made by the committee.

SALARIES AND ALLOWANCES. The Constitution has provided for the payment of salaries and allowances to members of the Legislative Assembly and the Legislative Council of a State. The justification for such payments lies in the fact that the duties of the members of a Legislature have now become so immense and complicated that they occupy all his working time and energy and he cannot therefore be expected to devote himself to his work entirely in an honorary capacity. The salaries and allowances to which a member will be entitled will be determined from time to time by the Legislature of the State by law, and until such a law is passed they will be such as existed immediately before the commencement of the Constitution in the corresponding province. In the State of Bombay, members of the Legislature are paid a salary of Rs 150 per month in addition to travelling and other allowances.

Procedure of Work in Legislative Matters

CONFLICT BETWEEN THE ASSEMBLY AND THE COUNCIL. Any Bill other than Money Bills and Financial Bills may originate in either House of the Legislature. A Bill shall not be deemed to have been passed unless it has been agreed to by both Houses, subject however to the following provision. If after a Bill has been passed by the Legislative Assembly and transmitted to the Legislative

Council the Bill is rejected by the Council, or more than three months elapse from the date on which the Bill is laid before the Council without its being passed by that chamber, or the Bill is passed by the Council with amendments to which the Assembly does not agree, the Assembly may pass the Bill again in the same or in any subsequent session and then transmit it to the Legislative Council; if the Council rejects it or more than one month elapses from the date on which the Bill is laid before the Council without its being passed by that chamber, or the Bill is passed by the Council with amendments to which the Assembly does not agree, then the Bill shall be deemed to have been passed in the form in which it was passed by the Assembly for the second time with such amendments as may have been suggested by the Council and agreed to by the Assembly.

LAPSING OF BILLS. A Bill pending in the Legislature shall not lapse by reason of the prorogation of its House or Houses. A Bill pending in the Legislative Council which has not been passed by the Assembly shall not lapse on the dissolution of the Assembly. A Bill which is pending in the Assembly, or which having been passed by the Assembly is pending in the Council, shall lapse on a dissolution of the Assembly. A Money Bill shall not be introduced in the Legislative Council. After a Money Bill has been passed by the Legislative Assembly it shall be transmitted to the Council for its recommendations, and the Council shall within a period of fourteen days thereafter return the Bill to the Assembly with its recommendations; the Assembly may thereupon either accept or reject all or any of the recommendations of the Council. If a Money Bill is not returned by the Council within a period of fourteen days it shall be deemed to have been

passed by both Houses in the form in which it was passed by the Assembly. A Bill shall be deemed to be a Money Bill if it contains only provisions dealing with matters regarding taxation or the regulation of the borrowing of money, or the Consolidated or Contingency Fund of the State. If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the Legislative Assembly on the question shall be final.

ASSENT OF THE GOVERNOR. When a Bill has been passed by the Legislative Assembly, and if there is a Council, by the Assembly and the Council, it must be presented to the Governor; he may assent to the Bill or withhold his assent or may reserve the Bill for the consideration of the President. The Governor may also, as soon as possible after a Bill is presented to him for assent, return the Bill if it is not a Money Bill together with a message requesting the House or Houses to reconsider the Bill or any of its specified provisions; he may even recommend in his message the desirability of introducing certain amendments. When a Bill is so returned the House or Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the House or Houses, with or without amendment, and presented to the Governor for assent, the Governor shall not withhold his assent. The Governor shall not assent to any Bill which in his opinion would so derogate from the powers of the High Court as to endanger the position which that Court is designed to fill by the Constitution; such a Bill must be reserved by the Governor for the consideration of the President. This is a healthy limitation on the power of the State Legislature to diminish the authority of the High Court in any way. The independence of the judiciary in a State is thereby assured.

ASSENT OF THE PRESIDENT. When a Bill is reserved by a Governor for the consideration of the President, the President may either assent to the Bill or withhold his assent. Or if it is not a Money Bill the President may direct the Governor to return the Bill to the Legislature with a message that the Bill may be reconsidered by them, including any amendments to it that may be suggested. When a Bill is so returned, the Legislature shall reconsider it accordingly within a period of six months from the date of receipt of such message; and if it is again passed by the Legislature with or without amendment it shall be presented again for his consideration. It is not laid down that the President shall give his assent to a Bill which is so presented. He can therefore refuse his assent and the Bill will be taken to have failed.

It will be noticed that the President's assent is not required for all Bills passed by the State Legislature. He comes into the picture only in respect of Bills that are reserved by the Governor for his consideration. The Governor is of course the President's nominee and the President may if he so desires direct the Governor to reserve a Bill for his consideration. Whether such interference on the part of the President in the Governor's functions and discretion would be consistent with the spirit of the Constitution and the autonomous status of the federal units will be a moot question. In any case it is certain that when the President vetoes a State Bill there is no method of overriding that veto. There is also no time limit within which the President must declare that he has assented to a Bill or has withheld his assent, with the result that he can keep a Bill pending for an indefinite period of time.

THREE READINGS OF A BILL. The stages in the passing of a Bill in a State Legislature will be the same as those that have been described in respect of the passing of a Bill in Parliament.[1] To start with there is the motion for leave to introduce the Bill; then if the motion is accepted, the Bill will be published in the Government *Gazette*, unless it has already been published under the orders of the Governor who will have the power to order such a publication although no motion has been made for leave to introduce the Bill; if the Bill is so published it shall not be necessary to move for leave to introduce it. After the Bill is introduced, it will be subjected to what may be described as the first reading; this will be in the form of a motion either that the Bill be taken into consideration at once or that it be referred to a Select Committee of the House or that it be circulated for eliciting public opinion. Only the principles of the Bill and its general provisions may be discussed at this stage nor can any amendments be moved, except for proposing a reference to a Select Committee or for proposing circulation for eliciting public opinion. The Select Committee is intended to go into every detail of the Bill, carefully examine all its provisions and implications, and suggest alterations and modifications. The Committee will consist of persons who are interested in the subject of the Bill, and the results of their investigation will serve as an excellent guide to the members of the Legislature in forming their opinion. The report of the committee, with dissenting minutes if any, will be circulated to all the members of the House and shall be presented to the House by the Chairman of the Committee.

After the presentation of the Select Committee's report

[1] See Pt. II, ch. 15.

starts the second reading of the Bill. It will be in the form of a motion that the Bill as reported by the Select Committee be taken into consideration. When the motion is agreed to, consideration of the Bill is taken up clause by clause. Any member can move amendments to any part of the Bill after giving necessary notice as prescribed in the Rules, the usual period of notice being ten days. Voting will first take place on the amendments and then the clauses as amended or otherwise will be put to the vote. The second reading is the most important stage in the passing of the Bill because it is during this stage that every aspect of the Bill including its language is thrashed out in detail. Then follows the third reading, the motion being that the Bill be passed. No discussion can take place at this stage and only verbal amendments may if necessary be moved for correction or clarification of language. After the Bill is passed in these three readings it is signed by the Speaker and submitted to the Governor for his assent. The justification of such a long process for the passage of a Bill into law has been already stated.[1] It satisfies the democratic technique of free and frank discussion, fearless expression of dissent, attempt at persuasion and adequate time for public agitation.

Procedure in Financial Matters

EXPENDITURE CHARGED ON THE CONSOLIDATED FUND. The Governor shall in respect of every financial year cause to be laid before the Legislature a statement of the estimated receipts and expenditure of the State for that year. This is called the Annual Financial Statement or, in popular language, the Budget. It must show separately in its estimates of expenditure the sums required to meet

[1] See Pt. II, ch. 15.

expenditure which is charged upon the Consolidated Fund of the State, and the sums required to meet other expenditure proposed to be made from the same Fund; expenditure on revenue account must also be distinguished from other expenditure. The following expenditure shall be charged on the Consolidated Fund: (*a*) the emoluments and allowances of the Governor; (*b*) salaries and allowances of the Speaker and the Deputy Speaker of the Assembly and of the Chairman and Deputy Chairman of the Council; (*c*) debt charges for which the State is liable including interest, sinking fund charges and so on; (*d*) salaries and allowances of High Court judges; (*e*) any sums required to satisfy any judgment, decree or award of any court; and (*f*) any other expenditure declared by the Constitution or by the Legislature of the State by law to be so charged. Estimates relating to expenditure charged upon the Consolidated Fund of a State shall not be submitted to the vote of the Legislative Assembly, but a discussion can take place on any of those estimates.

Demands for Grants. All estimates relating to expenditure which is not charged upon the Consolidated Fund must be submitted to the Legislative Assembly in the form of demands for grants. The Assembly shall have power to assent, or to refuse to assent, to any demand or to suggest a reduction in the amount of the demand. It will have no power to suggest an increase in the amount demanded. No demand for a grant shall be made except on the recommendation of the Governor, that is, the Ministry in power. These provisions are of course absolutely necessary in order to prevent any irresponsible and frivolous suggestions that non-official members may sometimes be tempted to make because of their mistaken notions in regard to the working of a democratic polity

and an inadequate appreciation of the democratic ideal. The executive alone, with all its inside knowledge of the working of the governmental machine and its requirements, is really competent to estimate what amounts of expenditure are required for particular purposes. The initiative in computing the amounts and demanding them from the Legislature must obviously be vested in the Ministry.

THREE STAGES IN BUDGET DISCUSSION. In the State Legislature, as in Parliament, there will be three stages in the passage of the Budget. Firstly, it is presented to the Legislative Assembly by the Finance Minister and to the Council where it exists by some other Minister, the presentation being accompanied by a long explanatory speech from the Finance Minister. Then, after a few days, there is a general discussion on the proposals made in the Budget, members expressing their opinions on the general policy of the Government in regard to all matters of public importance. A definite number of days, usually three or four, is allotted for the purpose. Then follows the third stage of the voting of demands for grants. A separate demand is made for each department by the Minister concerned. Members are free to make the grant or to reduce it or to refuse it altogether, but they cannot increase it. Cut motions are made at this stage either for the purpose of effecting economy or more often for the purpose of getting an opportunity to discuss and criticize the Government's actions and to ventilate popular grievances in connexion with such actions and policies. These are called token cuts and are moved both by members of the Ministerial party and by Opposition parties in the Legislature. They are an excellent instrument for throwing the searchlight of publicity on the

general routine of the administration as also on some specific acts of commission or omission on the part of the Ministry. A specific number of days, usually twenty, is allotted for the voting of grants. On the last of these appointed days and one hour before the adjournment of the sitting, all the demands which have not been disposed of till then shall be put by the Speaker to the vote of the Assembly and they will have to be agreed to or rejected by the Assembly without any amendments or discussion. The application of this 'guillotine' is very essential because in its absence the untiring eloquence of members may prolong the passage of the Budget beyond all reasonable measure of time.

APPROPRIATION ACTS. As soon as grants of expenditure have been voted by the Assembly, there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of the State of all the monies required to meet (*a*) the grants so made by the Assembly, and (*b*) the expenditure charged on the Consolidated Fund. No amendment shall be proposed to any such Bill in any House of the Legislature which will have the effect of varying the amount or altering the destination of any grant. No money shall be withdrawn from the Consolidated Fund except under appropriation made under the Appropriation Acts.

SUPPLEMENTARY AND ADVANCE GRANTS. Supplementary budgets containing supplementary demands for grants may be submitted to the Assembly if it is found that additional expenditure is necessary on any particular item or items, and after they are agreed to the necessary Appropriation Bills will also be presented and passed. The Assembly shall have power to make any grant in advance in respect of the estimated expenditure for a part of the

year, and also to make a grant for meeting an unexpected demand upon the resources of the State, and to make an exceptional grant which forms no part of the current service of any financial year. Money required for such expenditure can be withdrawn from the Consolidated Fund by the authority of the Legislature.

PROCEDURE IN OTHER MATTERS. Procedure in a House of a State Legislature in regard to questions, resolutions, adjournment motions and motions of no-confidence in Ministers is mostly the same as has been prescribed for Parliament, though Rules and Standing Orders are made for that purpose by the State Legislature itself by resolutions. The details of that procedure have been described in an earlier chapter[1] and in all essential particulars they may be taken to supply the pattern which obtains in every State.

[1] See Pt. II, ch. 15.

THE STATE JUDICIARY

GUARDIAN OF CIVIC PRIVILEGES. The judiciary forms an integral part of the organization of any State. Its chief importance lies in the fact that it is specially charged with the duty of preserving and protecting those liberties, privileges and rights which the State itself confers upon its individual citizens. There are two possible dangers of invasion on that civic assurance. A private citizen may act contrary to law and endeavour to assert his superiority against a weaker victim. Or the same crime may be committed by officials of the State. Justice must be fully vindicated in both the cases. It is the function of the judiciary to study the law, to interpret it and to see that it is correctly applied. Judicial commands must effectively prevail even against the highest authority of the State or the most wealthy classes of its citizens if it is proved that they are guilty of illegal action. Such a guarantee constitutes one of the best safeguards for the preservation of a democratic society and of human civilization.

QUALITIES REQUIRED IN A JUDGE. It is therefore of the utmost importance that judges should be men of supreme integrity, fearless, thoroughly independent and impartial in their outlook. They must also be profoundly learned in law and widely experienced in the affairs of men and the world. An attempt must be made by the State to discover persons with these requisite qualities and to create for them an atmosphere of judicial dignity and detachment, so that the danger of their being polluted

by corruption of any kind is reduced to the minimum. A judge has been regarded as a very venerable person in the social life of all countries from very early times, and judges are known to have played an important, often a decisive part in public affairs.

There were elaborate judicial arrangements, according to the conceptions and standards of those days, made by Hindu and Muslim rulers in different parts of the country before the advent of British rule. The British Government established in this country not merely a strong, efficiently organized and admirably disciplined bureaucracy but also an impartial and independent judicial system, the existence and functioning of which inspired a sense of profound confidence in the mind of the people, at least in legal proceedings in which political offences were not involved. Even during the dark days of repression, which was an inevitable phase in the struggle for political freedom, the High Courts in British India are known to have displayed a remarkable degree of judicial fairness and impartiality, of course within the limits of the law which they had to apply and administer. It is hardly an exaggeration to say that a high standard of intelligence, independence and integrity in the dispensation of justice is one of the treasured legacies left by Britain to independent India.

PROVISIONS IN THE NEW CONSTITUTION. The framers of the new Constitution took special pains to create, both in the Union and in the States, an independent judiciary, and the Constitution contains separate chapters dealing with the Supreme Court for the Union and with the High Courts and other subordinate courts in the States. Provisions regarding the Supreme Court have been described at length in an earlier chapter.[1] It now remains to describe

[1] See Pt. II, ch. 16.

the judiciary in the States. It may be emphasized that the judicial set-up is prescribed in the Constitution itself and no change can be effected in it by the ordinary law of the land, whether passed by Parliament or by a State Legislature. The Constitution itself will have to be amended if any change or modification is contemplated. Every effort is made to ensure that there is no undue interference by the executive, directly or indirectly, in the work of the judicial officers and that the judiciary will serve as a valuable instrument for safeguarding the citizens' rights and privileges against encroachment from any quarter.

The High Court

Appointment of Judges. At the head of the judicial organization in a State stands the High Court, its very name being significant of its status. It has been laid down that there shall be a High Court for each State. The provision is mandatory and there is therefore no possibility of the existence of a grave hiatus in the judicial organization of a State because of the absence of such an important tribunal. Every High Court shall be a court of record and shall have all powers of such a court, including the power to punish for contempt of itself. Every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint, though a maximum number for each Court may be prescribed by the President from time to time. Every Judge of a High Court shall be appointed by the President after consultation with the Chief Justice of India, the Governor of the State and, in the case of a Judge other than the Chief Justice, the Chief Justice of the High Court.

Tenure and Qualifications. A Judge of the High

Court shall hold office until he attains the age of sixty years. He may, however, resign his office earlier; or he may be removed from his office by the President in the same manner in which the President has been empowered to remove a Judge of the Supreme Court. A person shall not be qualified for appointment as a Judge of a High Court unless he is a citizen of India and unless (*a*) he has for at least ten years held a judicial office in the territory of India or (*b*) has for at least ten years been an advocate of a High Court in any State. Thus barristers of the United Kingdom who are not advocates of a High Court in India are excluded.

OATH OF OFFICE. Every Judge before he enters upon his office shall make and subscribe before the Governor of the State, or any other person appointed by him, an oath or affirmation that he will bear true faith and allegiance to the Constitution of India and that he will duly and faithfully and to the best of his ability, knowledge and judgement perform the duties of his office without fear or favour, affection or ill-will and that he will uphold the Constitution and the laws. No person who has held office as a Judge of a High Court shall plead or act in any court or before any authority within the territory of India.

SALARIES AND ALLOWANCES. There shall be paid to the Judges of each High Court such salaries as are specified in the Second Schedule of the Constitution, that is to the Chief Justice Rs 4,000 per month and to any other Judge Rs 3,500 per month. These amounts are specified in the Constitution and are not left to be determined by Parliament. Any variation in them can be made only by an amendment of the Constitution. Every Judge shall also be entitled to such allowances and to such rights in respect

of leave and pension as may from time to time be determined by law made by Parliament; and until such a law is passed they will be the same that were applicable to the Judges of the High Court in the corresponding province before the commencement of the Constitution. The President may, after consultation with the Chief Justice of India, transfer a Judge from one High Court to any other High Court. When a Judge is so transferred he shall be entitled to receive in addition to his salary such compensatory allowance as may be determined by Parliament by law. The Chief Justice of a High Court may at any time, with the previous consent of the President, request a retired Judge of that Court or of any other High Court to sit and act as a Judge of the High Court of that State; and such a Judge shall receive such allowances as the President may by order determine. The Constitution does not provide for the appointment of any temporary or additional Judges to the High Court as was done by the Act of 1935. Instead it provides for the employment of ex-Judges for specific periods.

JURISDICTION AND POWERS. The powers and jurisdiction of the High Court in a State and also the law administered in it shall be the same as immediately before the commencement of the Constitution. Every High Court shall have power throughout the territory subject to its jurisdiction to issue to any person or authority including the Government directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of fundamental rights. The High Court shall have superintendence over all courts and tribunals throughout the territory subject to its jurisdiction. It can call for returns from such courts and make and issue general rules for regulating the

practice and proceedings of such courts. If the High Court is satisfied that a case pending in a subordinate court involves a substantial question of law regarding the interpretation of the Constitution, it shall withdraw the case from that court, and may either dispose of the case itself or determine the question of law and then return the case to the court from which it had been withdrawn; the subordinate court must then proceed to dispose of the case in conformity with the High Court's judgment.

Original Cases and Appeals. The High Court has both original and appellate jurisdiction in civil as well as in criminal matters. It functions as an original court in civil and criminal cases for the cities in which it is located. As an appellate court it hears appeals both in civil and criminal matters from all places in the area under its jurisdiction, entertaining appeals also from the original side. For the city of Bombay there has been recently established a City Civil and Sessions Court in order to relieve the pressure of original work on the High Court. Civil suits in which the amounts involved are more than Rs 2,000 but less than Rs 25,000 (suits up to Rs 2,000 being tried by the Small Causes Court) are tried in the first instance by the Civil Court and appeals are heard by the High Court. Criminal cases occurring within the limits of Bombay City which are required to be, and are, committed to the Sessions Court are tried by that court. Appeals in such cases lie to the High Court.

Appointment of Officers of the Court. The appointment of officers and servants of a High Court shall be made by the Chief Justice of the High Court or such other Judge or officer as he may direct; but the Governor may require by rule that in the case of persons not already attached to the High Court, appointments to specific posts

mentioned in the rule shall be made only after consultation with the Public Service Commission of the State. Impartiality in respect of recruitment and avoidance of nepotism are thus ensured. The administrative expenses of a High Court including all salaries, allowances and pensions payable to its officers and servants shall be charged upon the Consolidated Fund of India and will therefore be non-votable. Parliament may by law extend the jurisdiction of a High Court to any State or exclude its jurisdiction from any State other than the State in which the High Court has its principal seat.

Criminal Courts in the Districts

SESSIONS COURTS. Below the High Court there are subordinate courts for the disposal of civil and criminal business, and it is convenient to describe them separately. Every State is divided into sessions divisions, which are usually identical with the area of the District. For every such division, the State Government must establish a Sessions Court and appoint a Sessions Judge and if necessary Additional or Assistant Sessions Judges. These Sessions Courts function in their prescribed territorial jurisdiction. They are competent to try all criminal cases committed to them and to inflict any punishment authorized by law. Every sentence of death passed by them is, however, subject to confirmation by the High Court in the State. A Sessions Court is also a court of appeal against the decision of the magistrates subordinate to its jurisdiction.

MAGISTRATES. Below the Sessions Courts are Magistrates' Courts. In Bombay State they are divided into three classes. A First Class Magistrate has power to pass a sentence of up to two years' rigorous imprisonment and a fine of up to Rs 1,000. A Second Class Magistrate can pass a sentence

of up to six months' rigorous imprisonment and a fine of up to Rs 200. A Third Class Magistrate can pass a sentence of up to one month's imprisonment and a fine of up to Rs 50. Territorial limits are assigned to the magistrates and a detailed schedule drawn up to show the grade of magistrates competent to try various criminal cases. They have power to commit to Sessions Courts those cases which are out of their competence.

DISTRICT AND PRESIDENCY MAGISTRATES. In each District the Collector, or the Deputy Commissioner, is appointed District Magistrate and in this capacity supervises the work of other magistrates in the District. The subordinate revenue officials like Assistant and Deputy Collectors, mamlatdars, etc., have magisterial powers within their territorial jurisdiction. The District Magistrate distributes work among them. In what were formerly known as Presidency towns—i.e. Madras, Bombay and Calcutta—there are Presidency Magistrates, and in big cities, City Magistrates, to dispose of criminal cases, and to commit the more important to the High Court or to the Sessions. Honorary magistrates are sometimes appointed in big towns. They usually work in a bench and generally only petty cases are sent to them for trial.

JURY AND ASSESSORS. Trial by jury in criminal cases is one of the most cherished privileges in a country like England. It has been acquired after a good deal of constitutional struggle. To the political thinker, the existence of such a privilege may or may not appear to be an unqualified guarantee of the impartial carrying out of justice. It might positively appear to have large elements of imperfection which are bound to detract from the scientific and correct character of the verdicts given. The transaction of complicated judicial business by avowed

amateurs, depending upon their common sense to discharge their duties, may not evoke enthusiasm in the mind of a critical theorist. But apart from the theory of the question, a description of the jury system as introduced in India is interesting.

Trial by jury is the rule in original criminal cases brought before the High Courts. In the mofussil it is not always considered possible to empanel an efficient jury. Trials, therefore, are conducted either with the help of a jury or with the help of assessors. The difference between jurors and assessors is well known. The decision of the former is binding upon the judge, who rarely differs from them. The opinion of assessors, on the other hand, is not binding and their advice may or may not be accepted by the judge. Where it appears to the Sessions Judge that the verdict of the jury is manifestly absurd or perverse, he has the power to disagree with them and to refer the matter to the High Court, which has authority to pronounce its own decision.

The jury in trials before the High Court consists of nine persons; and of an uneven number, prescribed by the local Government, in the mofussil courts. After the leading of evidence and arguments of counsel on both sides are finished, the Judge explains the whole case to the jury, dwells upon the pros and cons of the case, explains the law under which the offence is alleged to have been committed, and leaves the final verdict to the discretion of the members of the jury. The latter adjourn for some time to deliberate among themselves and give either a unanimous or a majority opinion.

Civil Courts in the Districts

District Courts. The civil courts differ in nomenclature and in other respects in the different States, though

the essentials are the same. In Bengal, Agra and Assam there are three subordinate civil courts, the District Court, the Court of the Sub-Judges and the Munsiff's Court. In Bombay there are those of the District Judge and the Assistant Judge and the Senior and Junior Civil Judges. The officer who presides over the principal court of original civil jurisdiction in each District is known as the District Judge. He exercises control over all the subordinate courts within the District, and assigns to Assistant Judges the disposal of such suits as he deems fit. He has also to arrange for the guardianship of minors and lunatics and to manage their property. There is no limit to the pecuniary jurisdiction of the District Court in original civil plaints. It also works as an appellate court in cases which have been disposed of by the courts of Junior Civil Judges or in which the amount involved does not exceed Rs 5,000.

CIVIL JUDGES. Below the District Courts there are judges of two subordinate orders in the Bombay State. There are also Small Causes Courts in important towns. The Senior Civil Judge can try any civil suit irrespective of the amount of money involved. He has no appellate jurisdiction whatever. Appeals from his decision lie either to the District Courts or the High Court. The Junior Judge has power to try cases in which the sum involved does not exceed Rs 5,000. He, too, has no appellate powers.

SMALL CAUSES COURTS. A Civil Judge is sometimes invested with the summary powers of a Small Causes Court Judge. The jurisdiction of the Small Causes Courts in the Presidency towns is limited to cases where the sum involved does not exceed Rs 2,000, and in other important cities to cases where it does not exceed Rs 500. There is no appeal from decisions of these courts except on points of law and in certain cases which have been specified. Courts

of such summary powers are intended to facilitate the recovery of small debts and the quick disposal of minor litigation.

THE DISTRICT AND SESSIONS JUDGE. It must be noticed that in Bombay the District Judge presiding in the Civil Court is also the person who presides over the criminal or Sessions Court. The two courts and their jurisdiction are different, but the officer presiding over both is one and the same person. In actual practice, therefore, the District Courts and the District Judges, because of the combination of civil and criminal functions in their persons, possess extensive powers. District Courts, in fact, have both original and appellate powers and both civil and criminal jurisdictions. Besides, they control all subordinate courts in their Districts and to that extent possess certain administrative functions. The District Judge's office is therefore an office of importance. It was generally filled by members of the old Indian Civil Service, though a certain percentage of the posts was reserved for members of the provincial services and Sub-Judges were promoted to them. A few practising lawyers were directly recruited to hold the post.

Appeals

A JUDGE IS NOT INFALLIBLE. In the imperfect human world, even a trained Judge is liable to err. Sometimes his logic may prove to be faulty and his knowledge defective. He may be unconsciously swayed by obstinacy, prejudice, or passion. The conclusions at which he arrives in all sincerity may be at variance with facts. Some method has to be devised to minimize the chances of the miscarriage of justice which may result from the ineptitude or the fallibility of the Judge. The system of appeals is instituted for that purpose.

What is an Appeal? An appeal is a kind of petition and protest made by an aggrieved party against the decision of a Judge. In the nature of things, it must be heard by a superior tribunal, which can alter, reverse, or confirm the judgment of the trying court. The Judge who hears appeals is expected to have better qualifications and experience than the trying Judge. His verdict is supposed to be that of a wiser and more capable man. There can be an appeal against an appeal by the same process of reasoning. However, the number of appeals allowed in an individual case must be severely limited. Otherwise, judicial business would become endless. A halt has to be called at some point. In India, two appeals are allowed in civil cases and only one in criminal cases. Applications in revision are allowed in the latter after the first appeal is heard and decided.

Criminal Appeals. An appeal against the decisions of a Second Class or Third Class Magistrate lies to the District Magistrate or to any First Class Magistrate specially empowered by him. An appeal against the decisions of a First Class Magistrate lies to the Sessions Court. An appeal against the decision of the Sessions Court lies to the High Court. An application in revision can be heard by the Sessions Court against the judgment in appeal of a First Class Magistrate, or by the High Court against the judgment in appeal of a Sessions Court. In cases which are tried by a jury the right of appeal is restricted.

Civil Appeals. In civil cases, an appeal lies from the Junior Judge to the District Court, and a further appeal from the latter to the High Court. An appeal from the decision of a Senior Judge goes to the High Court, and a further appeal lies from the latter to the Supreme Court. The High Court can call for and examine the record of

any proceedings before the subordinate courts. Appeals in cases decided by the original side of a High Court lie to its appellate side and if the question involved requires an interpretation of the Constitution, to the Supreme Court. The highest appellate court that existed for India during the days of British rule was the Privy Council. This court had no original jurisdiction and it functioned in England. After the advent of Independence, its authority and jurisdiction over India have completely vanished.

CONTROL OF THE HIGH COURT OVER JUDICIAL ADMINISTRATION. In order to ensure that the District Courts and other subordinate courts are able to perform their functions without any interference from the executive, one of the important steps taken by the Constitution is that the appointment, posting and promotion of these Judges is not left entirely to the executive but a considerable voice in this respect is given to the High Court. It is, for instance, clearly provided in the Constitution that the appointments of persons to be District Judges and the posting and promotion of these officers in any State shall be made by the Governor of the State in consultation with the High Court of the State. A person not already in the service of the Union or of the State shall only be eligible to be appointed as a District Judge if he has been for not less than seven years an advocate or a pleader and if he is recommended by the High Court for appointment. The Governor, of course, will have to act on the advice of the Ministers, but as consultation with the High Court is made obligatory that Court is bound to play a very important part in the final decisions arrived at by the Ministers. Though the views of the High Court are not made binding upon the Ministers, it may be expected that normally the Ministry

will abide by any recommendations that may be made by the highest judicial body in the State.

Appointment of persons other than District Judges to the judicial service of the State shall be made by the Governor in accordance with rules made by him in that behalf after consultation with State Public Service Commission and with the State High Court. This method is expected to ensure that no patronage can be exercised by the Ministry and the evil consequences of even remote ministerial influence being exercised on a Judge in the discharge of his judicial functions are reduced to a minimum. In the framing of rules by the Governor, an independent body like the State Public Service Commission and also the High Court will naturally carry immense weight and once the rules are framed the machinery of recruitment may be expected to function in an impartial and impersonal manner. It is further provided that control over District Courts and over courts subordinate to the District Courts shall be vested in the High Courts. Such control includes the posting and promotion of persons belonging to the judicial service of the State and holding any post inferior to that of a District Judge and also the granting of leave to them. Thus all important powers in connexion with the administrative arrangement of the District Courts and courts subordinate to them are practically conferred on the High Courts, and thereby purity and impartiality in the dispensation of justice are sought to be achieved.

SEPARATION OF EXECUTIVE AND JUDICIAL FUNCTIONS. A passing reference may be made to a controversy which has been engaging the attention of Indian politicians for more than half a century. It refers to the magisterial powers that were enjoyed during the days of British rule by executive officers like the Collector, the Assistant and

Deputy Collector, the mamlatdar, and so on. It was contended that such a combination of executive and magisterial functions violated the first principles of equity and justice and was a danger to the freedom of the citizen. In the performance of their executive and administrative functions the Collectors and their subordinates might come into conflict with individuals or institutions, and it would be inexpedient and unsafe to invest these officers with judicial powers which could be utilized against those from whom they had differed. The combination of the two functions engendered a general distrust of the magistracy and was in fact considered to give an opportunity to government officials to abuse the powers vested in them. The Congress and other political leaders in India have for generations demanded the complete separation of executive and judicial functions, and after the assumption of office by Congress Ministries it was felt that this long-cherished objective would be immediately achieved. However, no uniform policy seems to have been adopted in this connexion by all the States, though some steps have been taken, after passing the necessary legislation, to deprive revenue officials like the Collector and his subordinates of at least some part of their magisterial powers.

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SUBDIVISIONS OF STATES AND THEIR ADMINISTRATION

DIVISIONS OF A STATE. It is proposed to give here a short description of the system of administration in the States as distinct from the controlling organization at headquarters. A State comprises a vast area, very often as big as the area of some of the larger countries of Europe. It would therefore be physically impossible to conduct its administrative business without further subdividing the area into smaller units and distributing Government authority amongst subordinate officers with a supervising agency above them. There is great diversity of conditions in the States. There is also some variety in the scheme of decentralization of authority within the State area. However, the District is the unit common to all States.

THE DIVISION AND THE COMMISSIONER. In some States, Districts may be grouped together into bigger units called Divisions for purposes of administration. In Bombay, for instance, until 1950, there were three such Divisions, the northern, the central and the southern, with their headquarters in Ahmedabad, Poona and Dharwar respectively. They followed, broadly speaking, the linguistic distribution of the province into Gujerat, Maharashtra and Karnatak. In some States, though not in Bombay, there is what is known as the Board of Revenue which functions in the capital. It is the chief revenue authority in the State and forms an appellate court in rent cases. At the head of

each Division there is an officer called the Commissioner, who is a senior member of the Civil Service. He is the principal adviser of the Government as to the action to be taken on every proposal about district administration which goes to the Government from Collectors and from other officers. He is also responsible for seeing that the policy of the Government in various matters is fully carried out by Collectors and other officers. The Commissioner has relations with practically every department of administration in his Division, though each operates directly under its own chief. Some powers are also exercised by him in respect of municipalities, local boards and village panchayats. The Division as an administrative unit was abolished in Bombay State in 1950 and so were the posts of Commissioners.

THE DISTRICT. The District is invariably the unit of administration in all States and is therefore of vital importance. In size the District varies from State to State and even from place to place in the same State. Its area varies from two to ten thousand square miles and its population from one to three million souls. Its average size was given as 4,430 square miles by the Montford Report. Some of the bigger Districts exceed the population of Switzerland, or the area and population of Denmark. The officer in charge of the District is known as the Collector.

THE COLLECTOR. The Collector is the representative of the Government in the District and is in touch with every inch of territory in the District through his subordinates, the mamlatdars and the village officials. The Collector is much more than the head of the revenue department in the District, and has been described as the pivot on which the District administration turns. He is expected

to superintend the working of all the important departments within his territorial jurisdiction, and thus serves as an agent for maintaining the efficiency and coherence of the governmental machine as a whole. He has the dual capacity of Collector and Magistrate and performs a large number of functions of many kinds.

As a Collector he is responsible for the collection of land revenue both on agricultural and on non-agricultural land in the District, and also forest revenue. He holds abkari sales and issues licences to vendors of liquors and narcotic drugs like opium, and takes steps to prevent smuggling. It is his duty to administer the Watan Act, which deals with inams, and to make grants of loans to needy agriculturists out of funds supplied by the Government. The Collector is in charge of the treasury and is responsible for the 'due accounting of all moneys received and disbursed, the correctness of the treasury returns and the safe custody of the valuables which it contains'. He has some powers in respect of local bodies like municipalities, local boards, and village panchayats.

As a District Magistrate, the Collector has both executive and judicial duties. He is at the head of all the magistrates in the District and has himself the powers of a First Class Magistrate. He can also hear appeals from the decisions of Second Class and Third Class Magistrates. In fact he is responsible for the administration of criminal law in the District. It is the duty of the District Magistrate to maintain law and order in the District, and for that purpose he controls the Superintendent of Police in administrative matters. He also issues licences under Acts like the Arms Act and the Petroleum Act. The Collector is the district registrar, and as such controls the administration of the registration department. He also has

to see that proper steps are taken by the local bodies in matters of sanitation, particularly on the outbreak of epidemics.

Collectors and their staff are officers intimately known to the people, coming into constant contact with them for a hundred reasons, and are the vehicles for conveying the orders of the Government to the people at large. During a large part of the year, the Collector has to move out to the different villages in his District, supervising the work of his subordinates and getting into direct touch with the people and the problems of administration. He is the eyes, ears, mouth, and hand of the State Government within his District and serves as its general representative.

VARIED NATURE OF THE COLLECTOR'S DUTIES. The organization of the Collectorate is 'so close-knit, so well established, and so thoroughly understood that it simultaneously discharges an immense number of other duties with ease and efficiency. Registration, alteration and partition of holdings, management of indebted estates, loans to agriculturists, settlement of disputes, and, above all, famine relief, are all matters which are dealt with by this agency'. The Collector is a 'strongly individualized worker in every department of rural economy'. In the old days of bureaucratic government when the Collector was the representative of a paternal, not constitutional, Government he had to perform a large number of functions connected with a variety of departments like police, jails, municipalities, roads, education, sanitation, dispensaries, local taxation and so on. 'He should be a lawyer, an accountant, a financier, a ready writer of State papers. He ought also to possess no mean knowledge of agriculture, political economy and engineering.' He is directed to

keep himself informed and to watch the operation of everything that passes in the District. 'The vicissitudes of trade, the state of currency, the administration of civil justice, the progress of public works' must engage his attention as much as protection of life and property and maintenance of peace. Even after the introduction of responsible Ministries in the States, the Collector of the District is the most important officer in the bureaucracy because of the first-hand personal knowledge that he has the opportunity to acquire about the people and problems of his District. He is in the closest possible touch with the realities of the situation. On his resourcefulness, efficiency and presence of mind depends the smooth course of administration in the District.

OTHER DISTRICT OFFICERS. The capital city of the District is the Collector's headquarters. Here are stationed the heads and the offices of various specialized departments which have to function within the area of the District. Establishments for irrigation, roads and buildings, agriculture, industries, factories, co-operative credit, and medical relief, exist with their heads in most of the Districts to perform the special functions assigned to them. The District Judge, the Executive Engineer, the Civil Surgeon, the District Superintendent of Police, the Assistant Registrar of Co-operative Societies, are all officers who are the heads of their respective departments in the territorial jurisdiction of the District. They are controlled by their own departmental superiors, but the Collector has a considerable voice in regard to their administration. They have been compared to different sets of strings connecting the Government with the people. Their policies are influenced in a varying degree by the head of the District. He is always there in the background 'to lend

his support or, if need be, to mediate between a specialized service and the people'.

PRANT OFFICERS AND MAMLATDARS. The District is further split up into smaller divisions. These subdivisions are under Prant Officers who are either junior members of the Indian Administrative Service called Assistant Collectors, or members of the Provincial Service styled Deputy Collectors. The general revenue and magisterial charge of the subdivision is vested in the subdivisional officer, subject to the control of the Collector. Arrangements within the division vary in the different provinces. In Bombay, the District is subdivided into talukas, each of which has as its head an officer known as the mamlatdar. He is to the taluka what the Collector is to the District, though in a diminutive measure. He has revenue and magisterial powers and has to supervise the working of the administration within his area. He also has other diverse duties. In fact, he is practically the general administrative officer of the Government in the area given to his care, namely the taluka.

VILLAGE OFFICIALS. Lastly, at the base of the system comes the Indian village with its organization of great antiquity still finding a place in the new system with certain necessary modifications. The headman, called the patil or patel, is the chief officer in the village and is responsible for the collection of revenue and the maintenance of peace in the village. He has the assistance of a talati or village accountant, who has to keep the village accounts, registers of holdings and, in general, all records of land revenue. The village watchman is the rural policeman. Most of these offices were formerly hereditary and continued to be so till recently. The tendency, however, of modern times is to abolish the

principle of heredity and to substitute a competitive test. The hereditary character of the kulkarni's or accountant's post has already disappeared and perhaps other posts may follow suit.

LOCAL SELF-GOVERNMENT

Local institutions are an important part in the structure of a modern State. Some of the most vital and obvious benefits of social life are obtained through them. It must be remembered that the Government is an instrument for the preservation and welfare of human society. After all, what is the end and purpose of all the complex political apparatus which civilized man has developed and is still developing? It is to bring about the moral and material happiness of the community, so that life can signify energy, joy and growth even to the meanest citizen. The constituents of this happiness in terms of visible utilities and services are not difficult to enumerate. They have reference to the actual routine of daily life.

Kinds of Social Utilities. For example, supplies of unadulterated milk, ghee, butter and other foodstuffs, plentiful filtered water for drinking purposes, an effective drainage system and other conservancy arrangements, healthy residential quarters with clean and cheerful surroundings are important factors which contribute to public health and comfort. Primary and vocational schools, libraries, museums, gymnasiums, swimming tanks, public parks and gardens, free medical dispensaries and hospitals, smooth and spacious roads, quick transport by bus and tram, fire engines, cheap gas and electricity services—these are amenities which make life attractive and worth living. They represent the fulfilment of organized human existence.

Yet it will be easily realized that in spite of their great

national importance these objects cannot be properly administered by the central authority of a nation. They are essentially local in their concept, local in the territorial extent of their utility and operation, and can best be managed by the people who are directly affected by the nature of the management. It is for this reason that institutions like municipalities and local boards have come into existence in all advanced countries. They are elective bodies, and are invested with powers of taxation, action and decision in respect of a specific sphere of governmental activity.

Local institutions of some kind have always existed in the social fabric of India. They formed an integral part of the ancient Hindu polity, and also continued to function in Mussalman days. However, municipalities, local boards and village panchayats as they are found today are the creations of British rule. It is with Lord Ripon's name that the establishment of local self-government in a liberal measure is associated. In 1882 his Government issued the famous Resolution which has guided all municipal legislation ever since. The main points in Lord Ripon's reform were that in municipal bodies non-officials should preponderate, the system of election should be widely introduced, and their chairmen should be non-official; that local bodies should have adequate resources and that Government control over them should be reduced. The object was declared to be 'to advance and promote the political and popular education of the people and to induce the best and most intelligent men in the community to come forward and take a share in the management of their own local affairs, and to guide and train them in the attainment of that important object'.

Local self-government became a Provincial and Trans-

ferred subject after the Montford Reforms, and all the provincial Governments displayed great zeal for the progress of local institutions. Many Acts for this purpose were passed in Bombay between 1921 and 1937. In 1924 the right to vote was given to women, and on the whole the constitutions of municipal bodies were liberalized during this period. A large percentage of the population secured the franchise and the powers of municipalities were increased. After the introduction of provincial autonomy the subject received further attention from the Congress Ministries, and the Bombay Legislature passed in 1938 an important amending Act called the Bombay District Municipal and Municipal Boroughs (Amendment) Act. The main reform that it introduced was to abolish the system of nomination of members. Some minor amendments were made after 1948, and since the inauguration of the new Constitution adult franchise has been introduced in elections to all local bodies.

LOCAL BOARDS. Local boards are bodies which look after local affairs in rural areas. No such boards existed in India up to 1870, in which year the District Local Fund Committees were established. The decentralization scheme of Lord Mayo pointed to a possible advance in the scheme. After Lord Ripon's Resolution of 1882 the Bombay Government passed an Act in 1884 by which a local board was established for every District and also one for each taluka. The Collector was to be an *ex officio* president, and the number of elected members was to be not less than one-half of the total number of members. The Bombay Local Boards Act was passed in 1923. It fixed the elective element at a minimum of three-fourths of the total number of members and enlarged the franchise considerably. The Act of 1938 abolished the system of

nomination altogether and made all seats elective.

VILLAGE PANCHAYATS. The village has been the primary territorial unit of governmental organization in India from ancient times. Even today, about eighty per cent of the Indian people live in villages. Through all the vicissitudes of India's political life, the village has maintained its position intact to a great extent. In the opinion of some eminent writers it has helped to conserve the vitality of the Indian nation. Village communities in ancient days were in many respects self-governing and were not much affected by the laws passed by the central authority.

With the passing of the Bombay Village Panchayat Act in 1920, the first step was taken in introducing self-government in the village. By an Act passed in 1933, panchayats were to be brought into existence on demand from the villagers, increased powers of taxation were conceded to these bodies, and they were permitted to try certain civil and criminal cases of a petty nature. Almost all the members were elected, though the patel was there *ex officio* and the Collector could nominate not more than two members. The panchayat was required to perform for the village those duties which municipalities performed for cities, and it could levy taxes on houses and lands, fairs and festivals, sale of goods, octroi, marriages, etc. By the Village Panchayat Act of 1939 provision was practically made for adult franchise, and every village with a population of 2,000 and more must now have a panchayat.

THREE TYPES OF MUNICIPALITIES. There are three types of municipalities in the State of Bombay. The first is represented by what is known as the municipal corporations which function for cities like Bombay, Madras, Calcutta, Poona and Ahmedabad. These are big cities and are given special treatment in view of their import-

ance. Separate Acts are passed by the State Legislatures to prescribe the constitution, functions and powers of these corporations. Their presidents are called mayors. The second type is represented by what were formerly known as city municipalities, and are now called borough municipalities. They function for cities with a population of not less than 15,000, and are governed by the Bombay Municipal Boroughs Act of 1925, as amended subsequently several times. In the third type are included municipalities of the smaller towns which have the right of having a municipality of their own. They are governed by the District Municipal Act of 1901 which has been amended several times subsequently, the latest amendment being enacted by the Legislature in 1950. The number of borough and district municipalities has increased after the merging of some of the old Indian States in the State of Bombay.

District Boards. For the rural area of every District there is established a District Local Board. The constitution, functions and powers of these bodies are prescribed by the Bombay Local Boards Act of 1923 as amended subsequently by several measures, the latest amendment being made in 1950. The total number of members of a municipality or a district board is to be determined by the State Government from time to time and it varies according to the size and population of the area concerned. All the seats in these bodies are now elective, the system of nomination having been abolished in 1938. They elect their own presidents from among themselves and similarly elect vice-presidents. Elections to local bodies are now held by adult franchise.

The General Body. All the members of a municipality or local board constitute what is known as its general

body, which discusses and decides all questions of policy and important details in regard to municipal administration and problems. In the general body are vested the powers of passing the budget, imposing taxation, voting expenditure and making rules and regulations which have to be obeyed by the citizens. It represents the people within its jurisdiction and is the primary democratic body in the organization of the State. What the Legislature is in the working of the State Government, the general body of a municipality or district board may be said to be in the working of local government. For the convenient transaction of business and efficiency of supervision, the general body of a municipality or local board is permitted to appoint various committees composed of its own members. The most important of these is the standing committee, which exercises general control over and takes the initiative in respect of the conduct of the municipal machine.

Executive Officials. For carrying on the work of local government a trained and capable administrative staff is required. Municipalities and local boards are therefore allowed to appoint officials like the chief officer, the engineer, the health officer, the officer who looks after education, and so on. These are assisted by a large number of inspectors, accountants, clerks and menials. In the case of corporations like those of Bombay, Madras, Calcutta, Poona and Ahmedabad the chief officers are called municipal commissioners and they are generally senior members of the Civil Service. They are appointed by the State Government. In Calcutta, the appointment used to be made by the corporation itself, but that power was taken away from the corporation in 1951.

Obligatory Functions. The functions of local institu-

tions like municipalities and local boards are divided into two classes, obligatory and discretionary. In the former category come the duties of lighting, watering and cleaning public streets and places; removing noxious vegetation; extinguishing fires; regulating or abating offensive or dangerous trades; acquiring and maintaining places for the disposal of the dead; constructing, altering and maintaining public streets, markets, slaughter-houses, drains, privies, washing places, drinking fountains, tanks, wells, etc.; obtaining a supply of water; registering births and deaths; public vaccination; establishing and maintaining public hospitals and dispensaries; establishing and maintaining primary schools, etc.

Discretionary Functions. Among the discretionary functions may be mentioned the laying out of public streets; constructing and maintaining public parks, gardens, libraries, museums, lunatic asylums, rest houses, dharmsalas and other public buildings; taking a census; making a survey; payment of salaries and other monetary charges incidental to the maintenance of any court of a stipendiary or honorary magistrate; maintaining a farm or factory for the disposal of sewage; and any other measure likely to promote public safety, health, convenience or education. The functions of local boards are, of course, mainly concerned with objects of rural importance and rural necessity.

The Need for Local Self-Government. This enumeration of functions will make it clear that municipalities or local boards are entrusted with duties which can best be performed by local bodies. Local self-government is, in fact, a process of political devolution. The principle which underlies it involves the conception of local autonomy. Both in the larger interests of the State and in

the narrower interests of the local area and its population, the delegation of powers and freedom to local bodies is considered to be desirable. It secures efficiency and economy of administration. What is more important, it has an excellent educative effect, inasmuch as it supplies a training ground for politicians and public workers. The consciousness of liberty and the sense of responsibility and personal interest in the management of administrative affairs are moral influences in themselves.

It will be observed that district boards are not called upon to perform exactly the same duties as municipalities in cities, though on the whole the nature of the two duties is the same. The district board looks after the rural area of the district; the municipality is concerned with the urban limits of the city. The needs of the two may be slightly different; for instance, the maintenance of public roads for communication between village and village may be a more onerous duty for a district board than the maintenance of streets in a city. Still, after allowing for the variation in the importance of particular items, the functions of municipalities and district boards will to a great extent be found to be similar.

SOURCES OF INCOME. In order to enable them to incur the expenditure that is involved in the performance of their duties, powers of obtaining income by means of taxation and fees must be allowed to local bodies. Taxes can be levied upon and fees collected from the specific areas demarcated as belonging to the municipality or the local board. Their jurisdiction is precisely defined. The kinds of taxes which local bodies can impose are as follows: (i) A rate on buildings or lands or both; (ii) a tax on vehicles; (iii) octroi on goods or animals or both; (iv) a tax on dogs; (v) a special sanitary cess on private

latrines, etc.; (vi) a general or special water rate; (vii) a lighting tax; (viii) a tax on pilgrims; (ix) a tax upon drainage; (x) general sanitary cess; (xi) a special educational tax; (xii) terminal tax; (xiii) a toll on vehicles.

In the case of local boards, the most important source of income is the cess upon land. It is collected by the revenue officers of the Government, along with land revenue, at a rate of so many annas in every rupee of the land revenue as may be determined by the local board; the maximum rate is however prescribed by the State Government and the cess actually imposed must be within that limit. Most sources of income that are available in a populated city are not available in rural areas and villages, and therefore a special source of income has to be devised for them. The imposition of local rates upon land for local purposes is the most satisfactory method of giving income to the district boards. The rates are collected by the same agency which collects land revenue for the Government, and the district boards are not required to spend any large amount of money for the machinery of collection. The board can also levy tolls, profession taxes and a cess on the water rate charged by the Government to irrigated lands.

Section IV *Miscellaneous*

27

THE PUBLIC SERVICES

NEED FOR A TRAINED BUREAUCRACY. Public services present a problem of peculiar importance in the functioning of democracy. In a form of government in which the people are supposed to be ruling over themselves it is obvious that the officers and men who carry on the work of administration must be entirely subordinate to the people. But this does not mean that any citizen in a democracy can at any time and at his own sweet will directly take up the work of any department of government or intrude and interfere in its working. That would lead to complete chaos. Government is a task of immense difficulty and great responsibility, and its performance is entrusted to a trained body of men generically called the services, or the administration, or the bureaucracy. This body of men is to be distinguished from the Ministers who form the political executive in parliamentary government and whose peculiarities and duties have already been explained.

The administration, or the services, are composed of men who have chosen government service as a career. The salaries that they earn are their principal means of livelihood. The services are divided into different grades according to the qualifications and the assignments of the members. The highest grade consists of persons who have satisfied high intellectual tests; they are appointed to hold the important key posts in the administration. The lower

grades require people with lesser qualifications, who are given lesser scales of salary, and are appointed to hold posts of lesser importance.

MINISTERS AND THE SERVICES. That in a democracy the services must be entirely under the control of the people of the country is indisputable. Members of the services cannot arrogate to themselves a status or responsibilities to which they are not entitled. The method of recruitment of the services, the scales of salary and allowances and other privileges enjoyed by them must be determined in accordance with the wishes of the public. The annual expenditure incurred in the maintenance of the services must be subject to the vote and sanction of the Legislature which represents the people. On the other hand, while conceding all this unquestioned supremacy of the Legislature, it is also necessary to emphasize that the executive personnel of a Government must be allowed considerable discretion and freedom of action within the sphere in which they are expected to function. Ministers are indeed their superiors; they will lay down principles and policies, often after consultation with the permanent heads of departments. But even Ministers, after explaining to the services what they are expected to do, may exercise only a broad supervision over the functioning of the administrative machine; only under exceptional circumstances ought they to interfere in the daily routine of official business. Such an interference on their part would hinder the smooth working of the bureaucratic apparatus. It would sap the self-confidence of high officials who would be reluctant to take any definite decisions because of the fear of being constantly overruled by Ministers, and a general deterioration in efficiency would be the inevitable result.

THE SERVICES ARE NON-POLITICAL. The personnel of the

services are not supposed to have any political bias. They are bound to carry out faithfully and to the best of their ability the policies laid down by the Ministers, that is ultimately by the people. It is of vital importance that such a sense of discipline and an impersonal attitude is developed by all the members of the services from top to bottom. The bureaucracy is essentially a body of trained experts whose experience, constancy and advice are extremely valuable to the nation. A perfect sense of security must be assured to them. They ought not to suffer in any way as the result of a change in the Ministry consequent on a general election. The administration ought never to be made dependent on the tender mercies of political parties. That would be the surest way of their degradation, and would be disastrous to the interests of the country.

COMPETITIVE TESTS FOR RECRUITMENT. Recruitment to the services, and particularly the higher grades, must be left to an authority which is both competent and independent and which is not under the control of the Ministry. Some of the best talents in the nation must be attracted to the services and that will be possible only if nepotism and patronage are completely eliminated, all legitimate freedom and security of tenure are assured to the services, and on the whole they are treated with consideration and respect. In modern days selection to the higher grades of the bureaucracy is usually made as the result of an examination which is held by men of experience, ability and a first-hand knowledge of the working of government. It is an open competitive test and any young man or woman of ambition and talent is free to appear for it. It is necessary to add that in a parliamentary democracy the services or the administration or the bureaucracy must never fail to realize that they are

essentially servants and not masters of the people, essentially instruments of the public will, and that it is their solemn duty to carry out the people's commands and mandates as directed by the Ministers. They may point out dangers, may express their scepticism about the feasibility of particular proposals and put before the Ministers all the facts in their possession. Their responsibility ends there. The Ministers' decision, right or wrong, must ultimately prevail and the services must ungrudgingly and loyally execute that decision.

In the days of British rule, the superior services had a special status as they were not subordinate or responsible to the Indian Legislatures but to the Secretary of State for India in England. Their salaries were placed among the non-votable items of the Indian budgets. Even after the introduction of provincial autonomy under the Government of India Act of 1935, control over what were called 'The Secretary of State's Services' was not transferred to and vested in the Ministers or the popular Legislatures. This provided a very awkward and anomalous situation because the men charged with putting the Ministries' policies into effect were statutorily privileged to look to an external authority to safeguard what were considered to be their interests.

Moreover, it was not until the introduction of the Government of India Act, 1919, that it had become possible for more than a handful of Indians to be recruited to the senior services, and it was felt that when they were so recruited their chances of speedy promotion were negligible. This gave rise to the sardonic joke that the Indian Civil Service was a complete misnomer for a body of men who were not Indian, or civil, or servants. Feeling in the country against what was called 'a foreign

bureaucracy' was also roused by the scale of remuneration paid to them out of the revenues of a poor country. But it was G. K. Gokhale who probably expressed what most people felt: that here was a moral question. The healthy ambitions of our people to rise to the highest posts in the service of their country were denied them, so that those administrative and military talents, which were one of the glories of our past, were atrophying from disuse. Happily all unnatural handicaps to advancement have now disappeared and since the achievement of Independence there is nothing to prevent any citizen of India, no matter what his status in life, from rising to the very top of the administration.

PROVISIONS IN THE CONSTITUTION. The new Constitution contains separate chapters concerning the services and lays down certain broad principles in regard to them. It is clearly stated that the recruitment and conditions of service of persons appointed to the public services either in the Union Government or in State Governments will be regulated by Acts of the appropriate Legislature. The authority of the people is thus asserted. Members of a Defence Service or of a Civil Service of the Union or of an All-India Service will hold office during the pleasure of the President. Members of the Civil Service of a State will hold office during the pleasure of the Governor or the Rajpramukh. This is meant to imply that they will not be liable to be discharged or dismissed before the due date of retirement excepting for grave breaches of discipline, crime or other serious types of dereliction of duty. Security of tenure is guaranteed in this way. It is also laid down that no person in a Civil Service, either in the Union or in a State, shall be dismissed or removed by an authority subordinate to that by which he was

appointed. No person shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken against him. In exceptional cases, however, when it is not considered practicable to give such an opportunity or when it is felt that it is not in the interest of the security of the State to give such an opportunity, the operation of this rule may be suspended.

ALL-INDIA SERVICES. If the Council of States declares by resolution that it is necessary or expedient in the national interest to provide for the creation of one or more All-India Services common to the Union and the States, Parliament may by law provide for their creation. Such a resolution of the Council of States must be passed by a majority of not less than two-thirds of the members present and voting. The Indian Federation, therefore, will have three types of service, one exclusively for the Centre, another exclusively for the States and a third which is common to both. This is rather an exceptional arrangement and may be considered to be a continuance of the old traditions of British days. The All-India Services are intended to supply officers for what are described as the strategic posts in State Administration as well as in the Union Government. They will help in maintaining high standards and efficiency because the All-India Services will be recruited on an all-India basis and on the passing of a fairly high intellectual test. It is felt that this system will also give a greater cohesion to the federal structure than is generally found in other federations.

PUBLIC SERVICE COMMISSIONS. There shall be a Public Service Commission for the Union and a similar Commission for each State. Two or more States may however agree to have one common Commission. The Chairman

and other members of the Union Public Service Commission shall be appointed by the President, and of a State Commission by the Governor or Rajpramukh of a State; one-half of the members of the Commission must be persons who have held office for at least ten years either in the Government of India or the Government of a State. A member of a Public Service Commission shall hold office for a term of six years and will be ineligible for reappointment to that office. He can only be removed from this office by order of the President on the ground of misbehaviour after the Supreme Court has on inquiry reported that the member concerned ought to be removed. Members who have become insolvent or who engage in any other paid employment or who become unfit by reason of infirmity of mind or body or who become interested in any contract or agreement made by Government may be suspended by the President. The number of members of the Union Commission will be determined by the President, and of a State Commission by the Governor or Rajpramukh who will also determine conditions of service.

It will be the duty of the Union and the State Public Service Commissions to conduct examinations for appointments to the services and to assist in framing and operating schemes of joint recruitment for special services. The Commissions shall be consulted by the respective Governments (*a*) on all matters relating to the methods of recruitment, (*b*) on the principles to be followed in making appointments and in making promotions and transfers from one service to another, (*c*) on all disciplinary matters affecting the services, (*d*) on any claim for the award of a pension in respect of injuries suffered by anyone serving under the Government, and (*e*) on any claim

by a servant in respect of costs incurred by him in legal proceedings arising out of his official duties. The opinion in all these matters given by the Commissions will not be mandatory but only advisory. However it is expected that its recommendations will generally be accepted by the executive authorities.

The expenses of the Public Service Commissions, including salaries, allowances and pensions, shall be charged on the Consolidated Fund of India or the Consolidated Fund of a State as the case may be. They will not therefore be subject to the vote of the Legislatures every year. It shall be the duty of the Union Commission to present annually to the President a report of the work done by the Commission. The President shall cause the report to be placed before Parliament together with a memorandum explaining the action taken by the Government on the report and the reasons why in particular cases its advice was not accepted. A similar report will be presented by a State Commission to the Governor or the Rajpramukh and placed before the Legislature of the State with a similar memorandum.

28

ELECTIONS AND THE ELECTION COMMISSION

Elections must be Free and Fair. A modern democracy is primarily based on the principle of representation and that principle is carried out in actual practice by the method of election. Democratic government is not government directly by *all* the people but by a comparatively small number who are chosen for that work by the people. The important point therefore is that the choice of the people must be entirely free and unfettered and that no adult citizen should be prevented from exercising that choice as a result of extraneous considerations such as birth, wealth or social status. The successful functioning of democracy hinges in a great measure on the mechanism of free, fair and impartial elections. Particular care should be taken to see that the party in power does not manipulate the election machinery for its own benefit. The right of the people to change any Government must always be respected and remain unchallenged. If elections are allowed to degenerate into instruments for the imposition by the ruling Ministry of its own nominees on the electorate, then democracy will be reduced to a mockery and will serve as a dangerous masquerade for dictatorship and despotism.

Creation of an Election Commission. The Indian Constitution has made special provision for the creation of an independent body to be in charge of elections. The body will have an independent status, will be above party,

and will not be liable to take its orders from the executive of the State. The evil of governmental interference in elections is thereby sought to be eliminated to a great extent. It is laid down that there shall be an Election Commission to perform the following duties and to exercise the necessary powers for that purpose: (*a*) the superintendence, direction and control of the preparation of the electoral rolls for all elections to Parliament and to the Legislatures of every State and for elections to the offices of President and Vice-President; (*b*) the conduct of all these elections; (*c*) the appointment of election tribunals to decide all doubts and disputes arising out of or in connexion with elections to Parliament and to the Legislatures of States.

The Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may fix from time to time. The appointment of all the Election Commissioners will be made by the President, subject to the provisions laid down by Parliament. The Chief Election Commissioner shall act as the Chairman of the Commission. The President may also appoint, after consultation with the Election Commission, such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of its functions. They will be appointed before the general election to the House of the People and to the Legislatures of each State.

Subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine. The Chief Election Commissioner shall not be removed from office except in the same manner and on the same

grounds as a judge of the Supreme Court can be removed. The conditions of his service shall not be varied to his disadvantage after his appointment. Other Election Commissioners or Regional Commissioners shall not be removed from office except on the recommendation of the Chief Election Commissioner. The President or the Governor or Rajpramukh of a State shall make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of their functions.

A CENTRALIZED BODY FOR THE WHOLE COUNTRY. The Election Commission is thus a centralized body and electoral arrangements for the whole country are placed exclusively in its hands. It will be the Commission which will issue directives to returning officers and polling officers; even the preparation of an electoral roll will be its responsibility and not that of any State Government. It will be independent of executive control. The whole idea is to ensure that no injustice is done to any citizen in respect of his right of free voting and that the purity of elections is maintained as much as possible.

NO COMMUNAL ELECTORATES. There shall be one general electoral roll for every territorial constituency for election either to Parliament or to the Legislature of a State. No person shall have the right to vote and no person shall be excluded from the right to vote on grounds of religion, race, caste or sex. Communal electorates are thus expressly abolished. The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; every person who is a citizen of India and who is not less than twenty-one years of age and is not otherwise disqualified on grounds of non-residence, unsoundness of mind, crime or corrupt

and illegal practices shall be entitled to be registered as a voter in any such election.

Representation of the People Acts. Subject to the provisions of the Constitution, Parliament may from time to time make laws regarding all matters connected with elections to Parliament or to a State Legislature; such laws may provide for the preparation of electoral rolls, delimitation of constituencies and all other matters necessary for securing the due constitution of the House or Houses of the Legislature. In the exercise of this power, Parliament has already passed the Representation of the People Acts of 1950 and 1951. They contain provisions regarding the allocation of seats and the delimitation of constituencies, the registration of electors, the qualifications and disqualifications of membership, the administrative machinery for the conduct of elections, the conduct of elections, the poll, the counting of votes, election expenses, disputes regarding elections, corrupt and illegal practices, by-elections, and so on. If Parliament has not by law made any provision relating to elections to a State Legislature, then the State Legislature may make from time to time such laws as may be necessary for the purpose.

29

SPECIAL PROVISIONS IN REGARD TO CERTAIN CLASSES

SPECIAL HELP TO BACKWARD CLASSES. The new Indian Constitution provides for a secular democracy based on adult franchise and conferring perfect equality of status on all citizens irrespective of religion, race, caste, or sex. It does not take cognizance of any artificial barriers created by birth or wealth. However, even while subscribing to such a noble ideal, the realities of the situation cannot be completely ignored. Unfortunately there are large sections of the population in India who are extremely backward and who have been subjected to social disabilities for centuries. It is absolutely necessary to give to these sections special protection and special concessions in order to enable them to catch up with the other sections of the population in respect of their political, economic, educational and social standards. Provision to that effect has, therefore, been made in the Constitution.

RESERVATION OF SEATS IN THE LEGISLATURE. It is laid down that seats will be reserved in the House of the People for the Scheduled Castes and the Scheduled Tribes. The number of seats so reserved in any State shall be in proportion to the population of the Scheduled Castes and Tribes to the total population in the State. Similarly, if in the opinion of the President the Anglo-Indian community is not adequately represented in the House of the People, he may nominate not more than two members of that community to the House of the People. Seats shall

also be reserved for the Scheduled Castes and Scheduled Tribes in the Legislative Assembly of any State and the number of such seats will be proportionate to the population of those Castes and Tribes. The Governor or the Rajpramukh of a State may nominate to its Legislative Assembly such number of members of the Anglo-Indian community as he considers appropriate. It is explicitly laid down that all this reservation of seats shall cease to have effect on the expiration of a period of ten years from the commencement of the Constitution, i.e. in 1960, unless in the meantime an amendment to the Constitution provides otherwise.

APPOINTMENTS IN THE SERVICES. The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration in making appointments to the services and to posts both under the Union Government and the Government of a State; but while doing so attention must also be paid to maintaining the efficiency of the administration. So far as the Anglo-Indian community is concerned, appointments of members of that community to posts in the Railways, Customs, Postal and Telegraph Services of the Union were made, during the first two years after the commencement of the Constitution (that is until 1952), on the same basis as immediately before the day of Independence, that is 15 August 1947. During every succeeding period of two years, the number of posts reserved for that community in the above services are being reduced by ten per cent of the number so reserved during the immediately preceding period of two years. At the end of ten years from the commencement of the Constitution, that is in 1960, all such reservations shall cease. The special grants enjoyed in pre-Independence days by the Anglo-Indian community

in respect of education are being progressively diminished so that they will disappear at the end of ten years.

APPOINTMENT OF A SPECIAL OFFICER. There shall be a Special Officer for the Scheduled Castes and Scheduled Tribes to be appointed by the President. It shall be the duty of this Officer to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under the Constitution. It shall also be his duty to report to the President upon the working of those safeguards at such intervals as the President may direct. The President shall cause all such reports to be laid before each House of Parliament so that Parliament will have the opportunity of knowing the state of affairs in regard to the backward communities of India and to discuss them.

APPOINTMENT OF A COMMISSION. The President may at any time appoint a Commission to report on the administration of the Scheduled Areas and the welfare of the Scheduled Tribes. Such a Commission must be appointed by him at the expiration of ten years from the commencement of the Constitution. The President may also appoint a Commission to investigate the conditions of the socially and educationally backward classes within the territory of India and the difficulties under which they labour; the Commission shall make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for that purpose by the Union or any State. The report of the Commission shall be presented to the President who shall cause it to be laid before each House of Parliament with a memorandum explaining the action taken by the Government regarding the recommendations contained in the report.

Which castes, races or tribes are to be deemed Scheduled Castes, and similarly which tribes or tribal communities are to be deemed Scheduled Tribes for the purposes of the Constitution has to be specified by the President after consultation with the Governor or Rajpramukh of a State. In the exercise of this power, the President issued orders called 'The Constitution (Scheduled Castes) Order, 1950', and 'The Constitution (Scheduled Tribes) Order, 1950', enumerating what are to be considered Scheduled Castes and Tribes in the different States of the Union.

It must be made clear that special concessions have been given to Anglo-Indians not because they are backward but because they are a very small minority which enjoyed special privileges during the days of British rule and requires time to adjust itself to the new situation created by the withdrawal of British authority from India.

THE OFFICIAL LANGUAGE AND OTHER LANGUAGES IN THE UNION

Adoption of Hindi. The official language of the Union shall be Hindi in Devnagari script. The form of numerals to be used for the official purposes of the Union shall be the international form of Indian numerals. For a period of fifteen years from the commencement of the Constitution, the English language shall continue to be used for all the official purposes of the Union for which it was being used before. Even during the period of fifteen years, however, the President may authorize the use of the Hindi language in addition to the English language and the use of the Devnagari form of numerals in addition to the international form of Indian numerals for any official purposes of the Union. After the period of fifteen years Parliament is empowered to provide by law for the use of the English language or the Devnagari form of numerals for such purposes as may be specified in the law.

Language Commission. At the expiration of five years from the commencement of the Constitution the President shall constitute a Commission consisting of a Chairman and other members representing the different Indian languages to make recommendations on (*a*) the progressive use of the Hindi language for the official purposes of the Union, (*b*) restrictions on the use of the English language for all or any of the official purposes of the Union, (*c*) the language to be used in proceedings in the Supreme Court

and High Courts, and in the authoritative texts of all Bills and Acts and all orders, rules and regulations made under the law, (*d*) the form of numerals, (*e*) any other matter referred to the Commission by the President as regards the official language.[1]

In making its recommendations the Commission shall have due regard to the industrial, cultural and scientific advancement of India; it must also have due consideration for the just claims and the interests of persons belonging to the non-Hindi-speaking areas in regard to the public services. The recommendations of the Commission shall be referred to a Committee consisting of thirty members, of whom twenty shall be from the House of the People and ten from the Council of States elected by them respectively in accordance with the system of proportional representation by means of the single transferable vote. The report of the Committee shall be submitted to the President who may after considering it issue directions in accordance with the whole or any part of the report.

The Legislature of a State may by law adopt any one or more of the languages in use in the State, or Hindi, as the official language of the State; but until the Legislature passes such a law English will continue to be the official language. The language which has been adopted by the Union as its official language shall be used for communication between one State and another and between a State and the Union. Until Parliament by law otherwise provides, all proceedings in the Supreme Court and in every High Court and the authoritative texts of all Bills or amendments of all Acts and of all orders, rules and regulations shall be in the English language. This applies both to the Union and the States. However, the

[1] Such a Commission was appointed in 1955.

Governor or Rajpramukh of a State may, with the previous consent of the President, authorize the use of Hindi or any other language in proceedings in the High Court of the State though the judgments, decrees or orders passed by such Courts must be in the English language. If a Bill or Act or Ordinance is made in a language other than the English language, a translation of the same in the English language shall be published under the authority of the Governor or Rajpramukh.

That a free country must have its own national language for all national purposes would appear to be a self-evident proposition. It would facilitate the working of democracy because the people's language would also be the language of government. It would also foster a more profound sense of common nationhood. Yet the fact cannot be ignored that the vast territory of India has been composed of different linguistic regions from ancient times and that the regional languages have a long history, a valuable and ever growing literature, and immense vitality. In building up the new Indian nation, it would be suicidal to ignore or detest the existence of this multiplicity of languages; on the contrary it must be wisely accepted as a reality. The Constitution has done so by giving, in its Eighth Schedule, a statutory recognition to the principal Indian languages and by prescribing it as a fundamental right that citizens can conserve their own language, script or culture. The unity of India must, after all, be unity in diversity.

EMERGENCY PROVISIONS

NEED FOR EXCEPTIONAL POWERS. A constitution functions smoothly in normal times. The normal functioning of the constitutional mechanism may prove inadequate and ineffective for meeting dangerous situations and it is considered very prudent to incorporate in a constitution some exceptional arrangement and procedure by resort to which an impending calamity can be faced and averted. The Indian Constitution contains a separate part devoted to Emergency Provisions. They are elaborated in detail and though the occasions for their exercise, it is hoped, will be very rare, yet if such occasions unfortunately do arise the provisions are expected to be sufficiently comprehensive and effective to overcome the danger. A reference has already been made to the Emergency Powers that are vested in the President, and in view of their importance they are described here in greater detail.

EXTERNAL AGGRESSION OR INTERNAL DISTURBANCE. The Constitution contemplates three different kinds of emergency: (i) An emergency due to external aggression or internal disturbance whereby the security of India or any of its territories is threatened. If the President is satisfied that such an emergency exists, he may by Proclamation make a declaration to that effect. The Proclamation may be revoked by a subsequent Proclamation; it shall be laid before each House of Parliament; and it shall cease to operate after the expiry of two months, unless before that period expires it has been approved by resolu-

tions of both Houses of Parliament. If any such Proclamation is issued at a time when the House of the People has been dissolved or if the dissolution of the House takes place during the period of two months after the issue of the Proclamation, the Proclamation shall cease to operate on the expiry of thirty days from the date on which the House first sits after its reconstitution, unless it is earlier approved by the House. A Proclamation of Emergency may be made before the actual occurrence of war or any aggression or internal disturbance if the President is satisfied that there is imminent danger of their occurrence.

While a Proclamation of Emergency is in operation, the Union Government is empowered to give directions to any State as to the manner in which the executive power of that State is to be exercised and Parliament is empowered to make laws in respect of subjects which are not enumerated in the Union List. This means that the Central Government can control the administration of any State in any matter and the Central Legislature can pass laws even in regard to subjects which are normally assigned to the jurisdiction of the State. It may be noted that this power of interference in State affairs given to the Centre does not amount to the suppression of the State Government or the State Legislature. Both can and will continue to function. The extraordinary power given to the Union Government is only intended to concentrate all the resources of the country. While a Proclamation of Emergency is in operation the President may direct that the allocation of revenues between the Union and the States as provided by the Constitution may be modified in the manner he prescribes. The whole scheme of the distribution of the powers of taxation between the Union and the

States can thus be temporarily altered. It is expressly made clear that it is the duty of the Union to protect every State against external aggression and internal disturbance, and to ensure that the government of every State is carried on in accordance with the provisions of the Constitution. The cumulative effect of the emergency powers vested in the President will be to remove any legal obstacle in the way of the Central Government's taking such legislative, executive and financial action as may be deemed necessary in the interest of the security of the country as a whole. National considerations must obviously supersede the autonomy of the States even in a federation.

FAILURE OF CONSTITUTIONAL MACHINERY IN A STATE. (ii) The second occasion on which a Proclamation may be issued by the President is in the event of a failure of constitutional machinery in a State. It may be issued by the President if, on receipt of a report from the Governor or Rajpramukh of a State, or otherwise, he is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the Constitution. The President by such a Proclamation can assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or Rajpramukh. He can also declare that the powers of the Legislature of the State shall be exercisable by the authority of Parliament. The State Legislature will thus be superseded and the authority of Parliament to make laws will be substituted in its place. The President can also make such incidental and consequential provisions as appear to him necessary for giving effect to the objects of the Proclamation. They can include provisions for suspending in whole or in part the operation of any provisions of the

Constitution relating to any body or authority in the State, but the President shall not be empowered to assume to himself any of the powers vested in or exercisable by the High Court of the State.

Any such Proclamation may be revoked or varied by a subsequent Proclamation. Every such Proclamation shall also be laid before each House of Parliament and shall cease to operate after the expiry of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament. If the Proclamation is issued when the House of the People is dissolved or the dissolution of the House takes place during the period of two months, it shall cease to operate at the expiry of thirty days from the date on which the House of the People first sits after its reconstitution, unless the House has approved of it before the expiry of that period. A Proclamation approved by Parliament shall cease to operate on the expiration of six months from the date of the passing of the second of the resolutions passed by Parliament approving it, but it can be continued for further periods of six months by resolutions passed to that effect by Parliament; however, no Proclamation shall in any case remain in force for more than three years.

SUSPENSION OF THE STATE GOVERNMENT. This provision corresponds more or less to Section 93 of the Act of 1935 which empowered the Governor to deal with a breakdown in the constitutional machinery. It is not, however, the Governor but the President who is empowered to take the necessary action and evidently the President would only act on the advice of his Ministers. The executive powers in the State will be assumed by the President and the legislative powers will be assumed by Parliament; it would

also be open to Parliament to delegate to the President or to any other authority such legislative powers. The emergency that is envisaged by a Proclamation of this type may or may not have any reference to external aggression and internal disturbance. More often than not, it is likely to be concerned with what may be described as a political breakdown when no stable Ministry can be formed because no party or combination of parties is able to secure a clear majority of votes in the Legislature for any considerable period of time. Acute political dissensions and personal rivalries may so upset the mechanism of political life in a State that no action can be confidently taken by any Ministry and the tempo of even the most elementary governmental activities may slow down to a dangerous degree. The Constitution has therefore provided a remedy.

ACTION TAKEN IN THE PUNJAB. It is interesting to note that in June 1951 a Proclamation suspending the Constitution in the State of the Punjab was issued by the President in exercise of his emergency powers. The Ministry in the State was dissolved and its administration was taken over by the President; similarly, the powers of the State legislature were taken over by Parliament. A proposal was also made to Parliament that it should delegate its legislative powers to the President, but the proposal was not accepted by that body because in its opinion it was not proper to concentrate in the hands of the President, i.e. the Union Ministry, both executive and legislative functions in regard to the State. The President's powers are exercised by the Governor as his agent and the Governor's actions will be subject to the scrutiny and sanction of the Union Ministry.

By a similar Proclamation issued in 1956, the Government of Travancore-Cochin was also taken over by the Central Government.

There is no provision in the Constitution for the suspension of the constitutional machinery in the Union in the event of a breakdown or deadlock. The President is not empowered to take over, even temporarily, the functions of the Union Ministry or of Parliament. It is not intended that there should be a sort of one-man rule in the Union even in an emergency. Any national calamity must be faced by all and finally overcome by the intelligent, strenuous and self-sacrificing efforts of all.

SUSPENSION OF THE RIGHT TO FREEDOM. While a Proclamation of Emergency is in operation, the Right to Freedom (described in the Fundamental Rights) will be practically suspended because the State will be allowed to make any law or to take any executive action irrespective of the restrictions that are normally imposed by the existence of that right. This is a very considerable curtailment of the rights of the citizen because the right to freedom includes freedom of expression, of assembly, of association, of movement, etc. It is justified only on the ground that times of grave national peril inevitably call for drastic powers in the hands of the authorities whose duty it is to rescue the country. When a Proclamation of Emergency is in operation the President may by order declare that the right to move any Court for enforcement of such of the Fundamental Rights as he may mention in the order shall remain suspended during the currency of the Proclamation. Any order so made may extend to the whole or any part of the territory of India. Every such order shall, as soon as may be after it is made, be laid before each House of Parliament. There is, however, no mention of a definite time limit, and there is nothing legally to prevent the President from delaying the placing of the order before Parliament.

FINANCIAL EMERGENCY. (iii) The third occasion on which the President can issue a Proclamation is when he is satisfied that a situation has arisen whereby the financial stability or credit of India or of any of its territories is threatened. Such a Proclamation shall cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament. During the currency of the Proclamation the Union Government can give directions to any State to observe such canons of financial propriety as may be specified in the directions, and it can also give such other directions as the President may deem necessary and adequate for that purpose. Any such direction may include a provision requiring the reduction of salaries and allowances of all or any class of State servants whether in the Union or in the State, and a provision requiring all Money Bills to be reserved for the consideration of the President.

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AMENDMENT OF THE CONSTITUTION

BALANCE BETWEEN RIGIDITY AND FLEXIBILITY. A country's Constitution is considered to be its fundamental law. It provides the structure of the Government of a State and therefore a solid framework of social existence. In the nature of things this framework cannot be tampered with frequently. The Constitution of a country, particularly when it is deliberately framed, is an expression of the beliefs and ideals which are subscribed to by the people and a mechanism for the realization of those ideals. If and when those beliefs and ideals change, the Constitution must also change to that extent; no constitutional arrangement or structure can be considered to be immutable. Such a rigidity would blight the vital impulse to grow and would prevent society from adjusting itself to all the dynamic situations and values which are of the very essence of human existence. But it is also true that a change in Constitution cannot be put on a par with a change in the ordinary law of the land. It would amount to a change in the basic concepts of social life and must require the conscious assent of an overwhelming majority of the people, an assent for the clear ascertainment of which a special procedure ought to be prescribed. In short the amendment of a Constitution ought to be a process which is neither too rigid nor too flexible, neither too difficult and complicated to bring about nor too easy and simple.

PROCEDURE FOR AMENDMENT. In India the Constitution

can be amended by the following process. A Bill for that purpose must be introduced in either House of Parliament and must be passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting; after it is so passed the Bill shall be presented to the President for his assent and upon such assent being given to the Bill the Constitution shall stand amended in accordance with the terms of the Bill. However, in respect of certain matters, an amendment of the Constitution shall also require to be ratified by the Legislatures of not less than one half of the States specified in Parts A and B of the First Schedule; resolutions ratifying them must be passed by those Legislatures before the amending Bill is presented to the President for his assent. These matters are (*a*) the manner of the election of the President, (*b*) the extent of the executive power of the Union and the States, (*c*) the Supreme Court and the High Courts, (*d*) the distribution of legislative powers between the Union and the States, (*e*) the representation of States in Parliament, and (*f*) provisions for the amendment of the Constitution. These are subjects which relate to the fundamentals of the federal structure and the States as constituent units of the federation are directly interested in any alteration proposed in the existing system. It is therefore appropriate that changes of this nature are brought about only with their consent.

It will be remembered that some changes in the Constitution are allowed to be made by a simple majority and by the legislative procedure prescribed for the passage of ordinary Bills. For example: the creation of new States or rearrangement of boundaries of existing States, the creation or abolition of the upper chambers

in the States, the constitutions of Part C States, and the administration of Scheduled Areas and Scheduled Tribes. This has introduced an element of flexibility in regard to those matters in which alteration may easily be left to be effected by the ordinary method of ascertaining public opinion.

The English Constitution—which is a product of continuous growth and not of a single enactment and which is broadly described as unwritten—does not make any distinction between ordinary law and constitutional law. It does not therefore prescribe any special procedure for constitutional amendment as such. Even such an important measure as the Parliament Act of 1911, which deprived the House of Lords of its effective political power, was passed by the usual legislative process by simple majority in each House. On the other hand, the American constitution has laid down a very elaborate and difficult procedure for its amendment. India has adopted a healthy *via media*. Changes can be brought about in its constitutional structure without excessive difficulty but at the same time not with that ease and simplicity that are associated with the procedure for the passage of an ordinary law.

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TEMPORARY AND TRANSITIONAL PROVISIONS

The framing of a Constitution takes a considerable time, and it was three years before the Indian Constitution was finalized and adopted by the Constituent Assembly. Even after the new framework of Government is ready, the change-over from the old order to the new cannot be completed at one stroke. It has to be brought about smoothly, without any break in administrative continuity and without any political vacuum being created by the sudden disappearance of the existing machinery. A brief transitional period has to be contemplated and provided for as a sort of bridge between the past that is vanishing and the future that is being ushered in. The Indian Constitution therefore contains a separate chapter entitled 'Temporary and Transitional Provisions'. They are intended to be strictly temporary, and valid only for the period and purposes of the transition. Some of the more important are mentioned below.

Provision for election to the two Houses of Parliament, the Council of States and the House of the People, as also to the Legislatures in the States, has been made by the Constitution. But the compilation of electoral rolls on the basis of adult franchise and comprising over seventeen crores of voters is an immense task which requires several months for completion. Other necessary details of electoral arrangement have also to be worked out. The new Parliament could not therefore come into

existence on the same day on which the Constitution was inaugurated. Yet the country could not be without a Legislature during the intervening period. It was therefore laid down that the Constituent Assembly which was functioning before the commencement of the Constitution should work as the Provisional Parliament, and exercise all the powers conferred by the Constitution on Parliament. They included even the power to amend the Constitution and it was actually exercised in June 1951. Similar provisions were made in regard to the State Legislatures. The old bodies were to continue till new ones were elected in accordance with the procedure laid down by the Constitution.

Procedure for the election of the President is prescribed by the Constitution. But obviously it could not operate till Parliament itself was regularly constituted. Till that was done, the Constituent Assembly was empowered to elect a person to be the President of India, and accordingly Dr Rajendra Prasad was elected by that Assembly. Persons holding office as Governors in the provinces before the inauguration of the Constitution were to continue to be Governors till new Governors were appointed in accordance with its provisions. The Judges of the Federal Court became Judges of the Supreme Court. The Judges of High Courts and other courts continued in their positions. All law in force in the territory of India immediately before the commencement of the Constitution continued to be in force after the commencement, until altered or repealed or amended by a competent Legislature or other competent authority.

In view of the special position of Kashmir, special treatment is accorded to that State and those provisions are included in this Chapter of the Constitution.

To facilitate the transition from the old order as prescribed by the Act of 1935 to the new order as prescribed by the Constitution, the President was given the power to remove any difficulties by directing that the Constitution should have effect, for a specified period, subject to such adaptations as he might deem necessary; the adaptations to be in the nature of modification, addition or omission. The President accordingly made several orders called 'The Constitution (Removal of Difficulties) Orders'.

SCHEDULES OF THE CONSTITUTION

THE SCHEDULES IN THE CONSTITUTION. A Constitution or an Act often contains what are described as Schedules, which are generally given at the end after the main framework of the law has been elaborately defined. Such Schedules are an integral part of the Constitution and have the same legal validity as any of its Articles or Sections. The introduction of Schedules is a device for the convenience of drafting and presentation. A Constitution is necessarily concerned with several details and has to prescribe regulations regarding them. The underlying principles governing those regulations and the obligations created by them may be the same in several cases. The enumeration of lengthy details can easily be separated from the enunciation of the general law which applies in common to all of them, and they can be specified in separate Schedules. This method serves a double purpose. First, it facilitates a reference to the details because they are put together in one place; second, it ensures a continuity of narration in respect of the broad principles of the law and of the main constitutional structure that it seeks to create.

The Indian Constitution contains eight schedules; a ninth was added by the Amendment Act of June 1951. The various provisions made by the Schedules have been included in the relevant exposition in the different chapters of this book. A brief account of the subject matter of each Schedule will, however, be found useful.

The First Schedule gives the names of the States of the Indian Union. Part A consists of ten, Part B of eight, Part C of ten and Part D of the Andaman and Nicobar Islands and Sikkim, after the changes made by Presidential Orders before 1950.

The Second Schedule contains provisions regarding salaries and allowances payable to the President, the Governors, the Prime Minister and other Ministers in the Union and in the States' Governments; the Speakers and Deputy Speakers of the House of the People and of the State Legislative Assemblies and Chairmen and Deputy Chairmen of the Council of States and of the State Legislative Councils; Judges of the Supreme Court and of the High Courts; the Comptroller and Auditor-General.

The Third Schedule gives the Forms of Oaths or Affirmations to be made by Ministers, members of the Legislatures, Judges of the Supreme Court and of the High Courts.

The Fourth Schedule gives the allocation of seats in the Council of States among the different States of the Union.

The Fifth Schedule contains provisions regarding administration and control of Scheduled Areas and Scheduled Tribes in Part A and Part B States but not including Assam. As the people in these areas are very backward and not capable of shouldering democratic responsibility, special arrangements have been made for their governance and for safeguarding their interests. These provisions can be amended, varied or repealed by Parliament by law from time to time.

Assam is a hilly country and some of its area is inhabited by hill tribes in various stages of progress. It is also a region forming the eastern frontier of India and has strategic importance. Particular attention has therefore

been paid to the government of such areas.

The Sixth Schedule contains provisions for the administration of Tribal Areas in Assam. They are very elaborate and refer to legislative, administrative, judicial and financial arrangements in regard to those areas. The Schedule can be amended, varied or repealed by Parliament by law from time to time.

The Seventh Schedule gives the three Lists of Subjects: the Union List containing 97 items, the State List containing 66 items and the Concurrent List containing 47 items.

The Eighth Schedule gives the list of the fourteen languages recognized by the Constitution as the languages of India. They are Assamese, Bengali, Gujarati, Hindi, Kannada, Kashmiri, Malayalam, Marathi, Oriya, Punjabi, Sanskrit, Tamil, Telugu and Urdu.

The Ninth Schedule was added by the Amendment of the Constitution made in 1951 and contains names of thirteen Acts the provisions of which are not to be deemed void or ever to have become void on the ground that they were inconsistent with any of the Fundamental Rights guaranteed by the Constitution. These Acts were passed between 1948 and 1950 by the different State Governments for the abolition of the zamindari system and for the introduction of land reform, and their validity had been questioned on the ground that they were inconsistent with the right to property guaranteed by the Constitution.

APPENDIX

A Short Summary of the Main Provisions of the States Reorganization Bill 1956

TERRITORIAL CHANGES AND FORMATION OF NEW STATES. There shall be added to the State of Andhra the territories comprised in (*a*) the districts of Hyderabad, Medak, Nizamabad, Adilabad, Karimnagar, Warangal, Khammam, Nalgonda and Mahbubnagar; (*b*) Alampur and Gadwal taluks of Raichur district; (*c*) Kodangal and Tandur taluks of Gulbarga district; and (*d*) Narayankhed and Zahirabad taluks of Bidar district and thereupon the said territories shall cease to form part of the existing State of Hyderabad and the State of Andhra shall be known as the State of Andhra-Telangana.

There shall be added to the State of Madras the territories comprised on the Agatheeswaram, Thovala, Kalkulam and Vilavancode taluks of Trivandrum district and the Shencottah taluk (excluding Puliyara Hill Pakuthy) of Quilon district; and thereupon the said territories shall cease to form part of the existing State of Travancore-Cochin.

There shall be formed a new State to be known as the State of Kerala comprising the following territories, namely, (*a*) the territories of the existing State of Travancore-Cochin, excluding the territories transferred to the State of Madras; (*b*) the territories comprised in (i) Malabar district, excluding the islands of Laccadive and Minicoy, and (ii) Kasaragod taluk of South Kanara district; and thereupon the said territories shall cease to form part of the States of Travancore-Cochin and

Madras, respectively.

The Laccadive, Minicoy and Amindivi Islands shall cease to form part of the State of Madras and shall become a Union territory.

There shall be formed a new State to be known as the State of Mysore comprising the following territories, namely, (*a*) the territories of the existing State of Mysore; (*b*) Belgaum district except Chandgad taluk and Bijapur, Dharwar and Kanara districts, in the existing State of Bombay; (*c*) Gulbarga district except Kodangal and Tandur taluks, Raichur district except Alampur and Gadwal taluks, and Bidar, Bhalki, Humnabad and Santpur (Aurad) taluks of Bidar district, in the existing State of Hyderabad; (*d*) South Kanara district except Kasaragod taluk and Amindivi Islands and Kollegal taluk of Coimbatore district, in the State of Madras, and (*e*) the territories of the existing State of Coorg; and thereupon the said territories shall cease to form part of the said existing States of Mysore, Bombay, Hyderabad, Madras and Coorg, respectively.

The territory comprised in (*a*) Greater Bombay district, (*b*) Borivli taluka of Thana district, except the villages of Bhayandar, Dongri, Ghod Bunder, Kashi, Maroshi, Mire, Rai Murdhe and Uttan, and (*c*) the villages of Kopari, Mulund, Nahur and Turmbhe in Thana taluka of Thana district, shall cease to form part of the existing State of Bombay, and shall become a Union territory.

There shall be formed a new State to be known as the State of Maharashtra comprising the following territories, namely, (*a*) Thana district except the portions specified above, West Khandesh, East Khandesh, Nasik, Dangs, Ahmednagar, Sholapur, South Satara, North Satara, Kolhapur, Ratnagiri, Kolaba and Poona districts, and

Chandgad taluka of Belgaum district, in the existing State of Bombay; (*b*) Osmanabad, Bhir, Aurangabad, Parbhani and Nander districts and Ahmadpur, Nilanga and Udgir taluks of Bidar district, in the existing State of Hyderabad; and (*c*) Buldana, Akola, Amravati, Yeotmal, Wardha, Nagpur, Bhandara and Chanda districts in the existing State of Madhya Pradesh; and thereupon the said territories shall cease to form part of the existing States of Bombay, Hyderabad and Madhya Pradesh, respectively.

There shall be formed a new State to be known as the State of Gujarat comprising the following territories, namely, (*a*) Banaskantha district except Abu Road taluka, and Amreli, Mehsana, Sabarkantha, Ahmedabad, Kaira, Panchmahals, Baroda, Broach and Surat districts, in the existing State of Bombay; (*b*) the territories of the existing State of Saurashtra; and (*c*) the territories of the existing State of Kutch; and thereupon the said territories shall cease to form part of the existing States of Bombay, Saurashtra and Kutch, respectively.

There shall be formed a new State to be known as the State of Madhya Pradesh comprising the following territories, namely, (*a*) the territories of the existing State of Madhya Pradesh, except the districts mentioned in clause (*c*) under Maharashtra; (*b*) the territories of the existing State of Madhya Bharat, except Sunel tappa of Bhanpura tahsil of Mandsaur district; (*c*) Sironj subdivision of Kotah district in the existing State of Rajasthan; (*d*) the territories of the existing State of Bhopal; and (*e*) the territories of the existing State of Vindhya Pradesh; and thereupon the said territories shall cease to form part of the existing States of Madhya Pradesh, Madhya Bharat, Rajasthan, Bhopal and Vindhya Pradesh, respectively.

There shall be formed a new State to be known as the

State of Rajasthan comprising the following territories, namely, (*a*) the territories of the existing State of Rajasthan, except Sironj subdivision of Kotah district; (*b*) the territories of the existing State of Ajmer; (*c*) Abu Road taluka of Banaskantha district in the existing State of Bombay; and (*d*) Sunel tappa of Bhanpura tahsil of Mandsaur district in the existing State of Madhya Bharat; and thereupon the said territories shall cease to form part of the said States of Rajasthan, Ajmer, Bombay and Madhya Bharat, respectively.

There shall be formed a new State to be known as the State of Punjab comprising the following territories, namely, (*a*) the territories of the existing State of Punjab, and (*b*) the territories of the existing State of Patiala and East Punjab States Union; and thereupon the said territories shall cease to form part of the said existing States of Punjab and Patiala and East Punjab States Union, respectively. (It is proposed to constitute in the Punjab State two regional committees of the Legislative Assembly.)

ZONES AND ZONAL COUNCILS. There shall be a Zonal Council for each of the following five zones, namely, (*a*) the Northern Zone, comprising the States of Punjab, Rajasthan and Jammu and Kashmir and the Union territories of Delhi and Himachal Pradesh; (*b*) the Central Zone, comprising the States of Uttar Pradesh and Madhya Pradesh; (*c*) the Eastern Zone, comprising the States of Bihar, West Bengal, Orissa and Assam, and the Union territories of Manipur and Tripura; (*d*) the Western Zone, comprising the States of Maharashtra and Gujarat and the Union territory of Bombay, and (*e*) the Southern Zone, comprising the States of Andhra-Telangana, Madras, Mysore and Kerala.

The Zonal Council for each zone shall consist of the following members, namely, (*a*) a Union Minister to be nominated by the President; (*b*) the Chief Minister of each of the States included in the zone and two other Ministers of each such State to be nominated by the Governor; (*c*) where any Union territory is included in the zone, one member from each such territory to be nominated by the President; (*d*) in the case of the Eastern Zone, the person for the time being holding the office of the Adviser to the Governor of Assam for Tribal Areas.

The Union Minister nominated to a Zonal Council shall be its Chairman. The Chief Ministers of the States included in each zone shall act as Vice-Chairman of the Zonal Council for that zone by rotation, each holding office for a period of one year at a time.

The Zonal Council for each zone shall have the following persons as Advisers to assist the Council in the performance of its duties, namely, (*a*) one person nominated by the Planning Commission; (*b*) the persons for the time being holding the offices of Chief Secretaries in the States included in the zone, and (*c*) the persons for the time being holding the offices of Development Commissioners in the States included in the zone. Every Adviser to a Zonal Council shall have the right to take part in the discussions of the Council or of any committee thereof of which he may be named a member but shall not have a right to vote at a meeting of the Council or of any such committee.

Each Zonal Council shall meet at such time as the Chairman of the Council may appoint in this behalf and shall observe such rules of procedure in regard to transaction of business at its meetings as it may with the approval of the Central Government lay down from time

to time. The Zonal Council for each zone shall, unless otherwise determined by it, meet in the States included in that zone by rotation.

A Zonal Council may from time to time by resolution passed at a meeting appoint committees of its members and Advisers for performing such functions as may be specified in the resolution.

Each Zonal Council shall have a secretarial staff consisting of a Secretary, a Joint Secretary and such other officers as the Chairman may consider necessary to appoint. The Chief Secretaries of the States represented in such Council shall each be the Secretary of the Council by rotation and hold office for a period of one year at a time. The Joint Secretary of the Council shall be chosen from amongst officers not in the service of any of the States represented in the Council and shall be appointed by the Chairman.

The office of the Zonal Council for each zone shall be located at such place within the zone as may be determined by the Council. The administrative expenses of the said office, including the salaries and allowances payable to or in respect of members of the secretarial staff of the Council other than the Secretary shall be borne by the Central Government out of monies provided by Parliament for the purpose.

Each Zonal Council shall be an advisory body and may discuss any matter in which some or all of the States represented in that Council, or the Union and one or more of the States represented in that Council, have a common interest and advise the Central Government and the Government of each State concerned as to the action to be taken on any such matter. A Zonal Council may discuss, and make recommendations with regard to (*a*)

any matter connected with, or arising out of, the reorganization of the States under this Act, such as border disputes, linguistic minorities and inter-State transport; (*b*) any matter concerning economic planning; and (*c*) all matters of common interest and benefit to the people in the field of social planning.

REPRESENTATION IN THE LEGISLATURES. Six of the eleven sitting members representing the State of Hyderabad shall be deemed to have been duly elected to fill six of the eighteen seats allotted to the State of Andhra-Telangana (they will be specified, here as also in similar other concerned States, by the Chairman of the Council of States).

Six of the seventeen sitting members representing the State of Bombay and the five sitting members representing the States of Saurashtra and Kutch shall be deemed to have been duly elected to fill the eleven seats allotted to the State of Gujarat.

The six sitting members representing the State of Travancore-Cochin and one of the eighteen sitting members representing the State of Madras be deemed to have been duly elected to fill seven of the nine seats allotted to the State of Kerala.

The eleven sitting members representing the States of Bhopal, Madhya Bharat and Vindhya Pradesh and five of the twelve sitting members representing the State of Madhya Pradesh be deemed to have been duly elected to fill the sixteen seats allotted to the new State of Madhya Pradesh.

Seven of the twelve sitting members representing the State of Madhya Pradesh, seven of the seventeen sitting members representing the State of Bombay and three of the eleven sitting members representing the State of Hyder-

abad be deemed to have been duly elected to fill the seventeen seats allotted to the State of Maharashtra.

The six sitting members representing the State of Mysore, and two of the seventeen sitting members representing the State of Bombay and two of the eleven sitting members representing the State of Hyderabad be deemed to have been duly elected to fill ten of the twelve seats allotted to the new State of Mysore.

The eleven sitting members representing the existing States of Punjab and Patiala and East Punjab States Union be deemed to have been duly elected to fill the eleven seats allotted to the new State of Punjab.

The nine members representing the State of Rajasthan and the sitting member representing the States of Ajmer and Coorg be deemed to have been duly elected to fill the ten seats allotted to the new State of Rajasthan.

Two of the seventeen sitting members representing the State of Bombay be deemed to have been duly elected to fill two of the three seats allotted to the Union territory of Bombay.

The sitting member of the State of Delhi shall be deemed to have been duly elected to fill one of the two seats allotted to the Union territory of Delhi.

The sitting member of the State of Himachal Pradesh shall be deemed to have been duly elected to fill the seat allotted to the Union territory of Himachal Pradesh.

The sitting member of Manipur and Tripura shall be deemed to have been duly elected to fill the seat allotted to the Union territory of Tripura.

THE LEGISLATIVE ASSEMBLIES. If the whole area of any Assembly constituency in an existing State is transferred to any other existing State or becomes part of a new State, (*a*) that area shall be deemed to form a constituency

provided by law for the purpose of elections to the Legislative Assembly of such other existing State or of such new State, as the case may be; and (*b*) the sitting member representing that constituency shall be deemed to have been elected to the said Legislative Assembly by that constituency and shall cease to be a member of the Legislative Assembly of which he was a member immediately before that day.

The persons who immediately before the appointed day are the Speakers and the Deputy-Speakers of the Legislative Assemblies of the existing States of Travancore-Cochin, Mysore, Madhya Pradesh, Rajasthan and the Punjab shall be the Speakers and Deputy Speakers respectively of the Legislative Assemblies of the corresponding new States.

The Speakers of the Legislative Assemblies of the existing States of Bombay and Saurashtra shall be the Speakers of the Legislative Assemblies of Maharashtra and Gujarat, respectively.

THE LEGISLATIVE COUNCILS. There shall be a Legislative Council for the new State of Madhya Pradesh consisting of 72 seats. There shall be 48 seats in the Legislative Council of Madras. There shall be a Legislative Council for the new State of Mysore; it shall consist of all the existing sitting members and 29 members to represent the added territories, the total number of seats being 60. There shall be a Legislative Council for the new State of Punjab consisting of 48 seats.

THE HIGH COURTS. The High Court at Bombay shall be the High Court for the States of Gujarat and Maharashtra and for the Union territory of Bombay. The High Courts exercising jurisdiction in relation to the existing States of Madhya Pradesh, Mysore, the Punjab,

Rajasthan and Travancore-Cochin shall be deemed to be the High Courts for the corresponding new States. The High Courts of Hyderabad, Madhya Bharat, Patiala and East Punjab States Union and Saurashtra and the Courts of the Judicial Commissioners of Ajmer, Bhopal, Kutch and Vindhya Pradesh shall cease to function and are hereby abolished.

THE THIRD SCHEDULE

Allocation of Seats in the House of the People and Assignment of Seats to State Legislative Assemblies

States		Number of seats in the House of the People	Number of seats in the State Legislative Assembly
Andhra-Telangana	..	43	301
Assam	..	12	108
Bihar	..	55	330
Gujarat	..	22	154
Kerala	..	18	126
Madhya Pradesh	..	36	288
Madras	..	41	205
Maharashtra	..	40	240
Mysore	..	26	182
Orissa	..	20	140
Punjab	..	22	154
Rajasthan	..	22	176
Uttar Pradesh	..	86	430
West Bengal	..	34	238
Jammu and Kashmir	..	6	—

Union Territories

States	Number of seats in the House of the People	Number of seats in the State Legislative Assembly
Bombay	5	—
Delhi	4	—
Himachal Pradesh ..	3	—
Manipur	2	—
Tripura	2	—

THE FOURTH SCHEDULE

Allocation of Seats in the Council of States

Andhra-Telangana 18, Assam 7, Bihar 23, Gujarat 11, Kerala 9, Madhya Pradesh 16, Madras 17, Maharashtra 17, Mysore 12, Orissa 10, Punjab 11, Rajasthan 10, Uttar Pradesh 34, West Bengal 15, Jammu and Kashmir 4, Bombay 3, Delhi 2, Himachal Pradesh 1, Manipur 1, Tripura 1; Total 222.

SOME OF THE PROPOSALS FOR AN AMENDMENT OF THE CONSTITUTION. For Articles 81 and 82, the following Articles shall be substituted, namely, '81. (1) Subject to the provisions of Article 331, the House of the People shall consist of (*a*) not more than five hundred members chosen by direct election from territorial constituencies in the States, and (*b*) not more than twenty members to represent the Union territories, chosen in such manner as Parliament may by law provide.'

The maximum strength of the Legislative Council of a State shall be one-third instead of one-fourth (as at present) of the strength of its Legislative Assembly.

Every Union territory shall be administered by the President acting through a Chief Commissioner or other authority to be appointed by him.

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